



Department  
for Education

# Free schools

**Guidance for mainstream, special,  
alternative provision and 16-19 free  
schools in the pre-opening phase**

**May 2018**

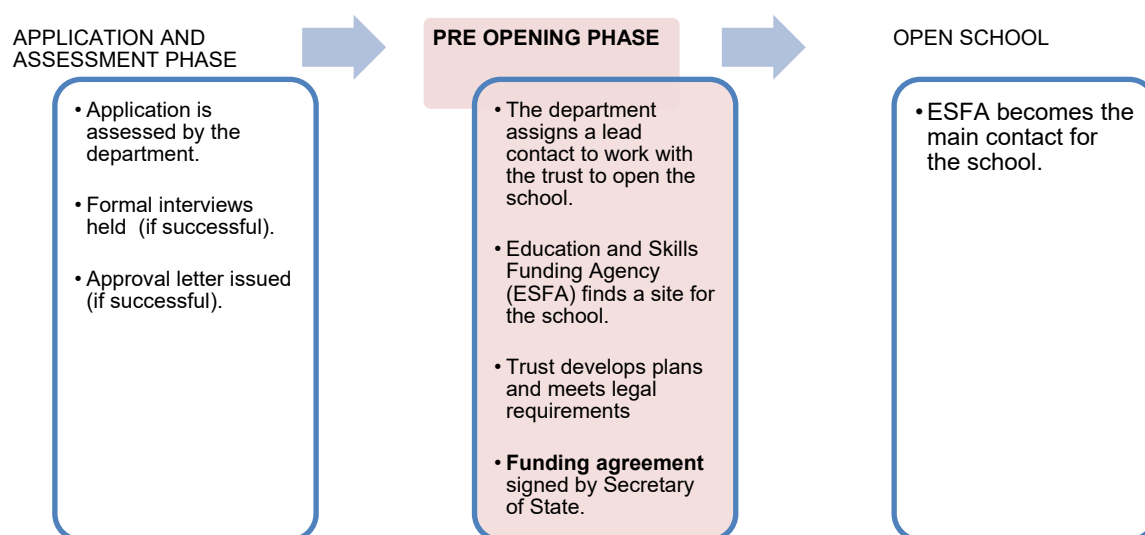
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# 1. Introduction to the pre-opening phase

## Free schools: the pre-opening phase

- 1.1 Congratulations on receiving approval for your free school application to enter the 'pre-opening' phase. Opening a free school is challenging, but incredibly rewarding. This guidance is designed to support you through this phase, as you turn your plans for a school into reality. It sets out the legal requirements and [key tasks](#) you will need to undertake to ensure your school opens successfully.
- 1.2 Thanks to the hard work of teachers and government reforms, there are 1.9 million more children in good or outstanding schools than there were in 2010. The free schools programme has played an important part in this by creating thousands of good new school places. Based on 2017 average Progress 8 scores, free schools are the best performing type of secondary school. In addition, free schools have introduced new providers into the system and injected innovation, challenging orthodoxies of English schooling.



- 1.3 Closing the attainment gap for disadvantaged pupils is a priority for the department. Every child in this country should have the opportunity to get the very best education, giving them knowledge and skills that set them up for life. Our expectation, therefore, is that your plans for your school will be focused on delivering a high standard of education for all pupils.
- 1.4 The final decision to open any free school depends on the Secretary of State entering into a legal contract – the funding agreement – with the academy trust. The Secretary of State will sign a funding agreement only if they are satisfied that there is a suitable site for the school that provides good value for money and that the school will provide a good standard of education, with a viable and sustainable number of pupils from its first day of operation. The department will advise,

challenge and support you throughout the pre-opening phase to ensure that your school meets these requirements.

- 1.5 For some projects, progressing to the pre-opening phase is subject to precise and strict conditions, which are set out in the approval letter. Further conditions may also be set during the pre-opening phase. These conditions often relate to a specific risk that must be addressed for the project to proceed successfully. Failure to meet any of these conditions would make it unlikely that the Secretary of State would be willing to enter into a funding agreement with your trust.
- 1.6 Equally, if you run an existing school – or have another application in pre-opening – and a departmental official or education adviser raises concerns about it and/or it is subject to a financial notice to improve from the Education and Skills Funding Agency (ESFA), we may need to reconsider the approval of this project, as a result of which it could be deferred or cancelled. The same would apply if Ofsted judge a school you currently run as either requires improvement or inadequate, or if there is a significant decline in the performance of one or more of your existing schools.

## Types of free school

- 1.7 This guidance applies to the following types of free school project in the pre-opening phase:
  - Mainstream (including primary, secondary, all-through and 16-19)
  - Special
  - Alternative Provision
- 1.8 There are some differences between the specific tasks that you will need to complete for certain pre-opening processes, depending on what type of school you are opening (for example, developing admission arrangements). Where this applies, subheadings will clearly indicate the specific tasks that you will need to complete, depending on the type of school that you are opening.
- 1.9 There is a presumption that any primary or all-through free school project approved from wave 13 (launched in May 2018) will include a nursery. Throughout the guidance, subheadings will clearly indicate the specific processes you must follow to successfully open your nursery.
- 1.10 This guidance also applies to presumption free school projects (those where the local authority has identified the need for a school and run a competition to select a trust to run the school) in the pre-opening phase. However, there are some differences between the pre-opening processes for presumption free schools and central route free schools (those approved as part of a wave), because local

authorities play a greater role in the delivery of presumption free schools. If you are opening a presumption free school, you should refer to the pre-opening section of the [free school presumption guidance](#) as well as this guidance, as this provides details of the differences to the pre-opening process.

- 1.11 The department will work closely with the local authorities in which special free school projects are based (including both central route special free schools and local authority commissioned special free schools) and will invite local authority representatives to attend checkpoint meetings for these projects. This reflects the fact that local authorities will be responsible for commissioning places at special free schools when they open.
- 1.12 There is separate pre-opening guidance for 16-19 maths schools, as the pre-opening processes that you will need to follow for these projects are different. If you are opening a 16-19 maths school, you should ensure that you refer to the correct pre-opening guidance for your project.

## **Roles and responsibilities**

- 1.13 All trusts will be assigned a lead contact in the department. The lead contact will help, advise and challenge you to ensure that your school will operate successfully, providing new good places and the system leadership where these are most needed, from day one. You will have regular interactions with your lead contact, including a number of formal meetings at specified milestones. These formal meetings between trusts and the department will normally be as follows:
  - the initial kick-off meeting
  - a checkpoint meeting to determine the provisional opening date, once the site has been confirmed
  - a checkpoint meeting, normally in the December or January before the provisional opening date, with a focus on pupil recruitment and other issues that need to be resolved before the Secretary of State will consider entering into a funding agreement
  - a readiness to open meeting (ROM), about three months before opening, to confirm that the school will open successfully
- 1.14 At all these meetings, we will assess the project's overall progress, identify any key risks that might prevent the school from opening on time and operating successfully once open, and assess the costs incurred to date and expected future spend. We may set up additional meetings, depending on progress. Although these formal meetings may take the form of a teleconference, more often than not they will be formal face-to-face meetings at an office of the department. We expect senior representation from the trust during these meetings.

- 1.15 You will also be allocated a lead from ESFA to secure your site and the buildings for your school. This is covered in more detail in the section on [Site and buildings](#).
- 1.16 Annex A contains a [project task checklist](#), which outlines the core tasks that need to be completed during pre-opening. The completion of these tasks at the appropriate time is critical to ensuring that your school can open successfully.
- 1.17 It is critical that you put in place robust planning and project management arrangements because the timetable for opening a free school is very demanding. Your lead contact will request a copy of your project plan ahead of the kick-off meeting.
- 1.18 We recommend that you designate a specific person responsible for managing your project, bringing together the various strands of activity, tracking progress and managing risks. You may use the project development grant (see [section 6](#)) to buy in project management support. More information about the [procurement of additional project management support](#) is provided in section 7.

## Determining the opening date of your school

- 1.19 One of the key milestones in the pre-opening phase will be to agree your provisional opening date. You will have your own preferred opening date for your project, but you must agree with the department what opening date you should use to market your school to parents. In most cases, agreement of your provisional opening date will only happen once a [site](#) has been confirmed, and we have assessed the time needed for obtaining planning permission and completing necessary building works or refurbishment. When agreeing a provisional opening date, we will also consider whether the need for the school identified at assessment stage remains and, if so, by when the new places the school will provide will be needed. For these reasons, you may need to be flexible about precisely where the school is located, as well as about the year of opening.
- 1.20 Once we have identified and confirmed a suitable site and carried out that assessment, the department – after discussion with you – will write confirming the provisional opening date. We will open a school in temporary accommodation only in a limited number of specific circumstances – details of these are provided in [section 8](#). We will normally arrange a meeting to discuss confirmation of the provisional opening date before we issue the formal letter.
- 1.21 Until a suitable site has been secured, we would expect trusts to maintain momentum by continuing to develop plans in parallel for issues such as the following:
- admission arrangements
  - curriculum plans

- governance plans including reviewing memorandum and articles of association

1.22 However, we would not normally expect you to undertake the following, which require confirmation of a site and provisional opening date, without prior agreement of the department:

- recruit the principal designate and other key staff
- carry out the statutory duty under Section 10 of the Academies Act 2010 to consult on the proposal for your school
- agree the terms set out in the funding agreement and understand the associated legal responsibilities and implications
- invite applications to your school

## 2. Key risks during pre-opening

- 2.1 Our experience from opening over 450 free schools suggests that most projects share a set of key risks that will need to be managed during pre-opening. Your lead contact will want to understand how you plan to manage each of these key risks. You should inform the department immediately if any of these risks materialise during your time in pre-opening, so that we can help to resolve them and enable you to open a good, viable school on time.

### Summary of key risks

Area	Types of risks to escalate to your lead contact
<b>Leadership</b>	A high quality principal designate is not recruited in the first or subsequent rounds of recruitment and, as a result, is not appointed early enough to support and influence the development of school policies and education brief.
<b>Staffing</b>	<p>Sufficient and suitable staff have not been recruited by the March of the agreed provisional year of opening.</p> <p>You wish to recruit staff before the department has agreed to enter into a funding agreement.</p>
<b>Governance</b>	A suitably skilled chair of trustees is not appointed by the end of October before opening.
	<p>If you run an existing school and/or have another project in pre-opening and:</p> <ul style="list-style-type: none"> <li>• you are issued with a financial notice to improve (FNTI)</li> <li>• a departmental official or education adviser raises any concerns about it – for example, financial concerns that fall short of an FNTI but are still a concern, such as a forecast deficit</li> <li>• Ofsted judge one or more of your existing schools as either ‘requires improvement’ or ‘inadequate’</li> <li>• there is a significant decline in the performance of one or more of your existing schools (for example, if your Progress 8 or Attainment 8 scores fall below agreed thresholds)</li> </ul>
	You are not able to submit a complete governance plan by the November before your agreed provisional opening date.



Area	Types of risks to escalate to your lead contact
<b>Pupil recruitment</b>	Marketing and recruitment plan targets have not been met, indicating that the school may be unviable upon opening.
	Application numbers, at the application deadline date, indicate the school will not be viable (below the department's minimum viable numbers, which are two forms of entry with 30 pupils each for primary schools, and four forms of entry with 30 pupils each for secondary schools, or below the viable number to deliver your curriculum – whichever is the higher).
	Accepted offer numbers, as of National Offer day, indicate that the school will not be viable (below the department's minimum viable number).
<b>Local factors</b>	In the case of AP/special schools, the number of referrals received from commissioners is low, making the school financially unviable.
	The local authority is or becomes unsupportive of the project.
	Local residents and/or schools raise significant opposition to your project during or following consultation.
	Opposition to the project attracts media attention.
<b>Finance</b>	Your project is linked to a new housing development and issues have arisen with that development that may result in delays.
	You are likely to run out of project development grant (PDG).
	A potential conflict of interest is identified when spending PDG (see separate guidance on procurement in <a href="#">Section 7</a> ).
<b>Education</b>	You are unable to submit a viable financial plan ahead of the readiness to open meeting.
	You fail to agree an education plan with your education adviser.
<b>Admissions</b>	You wish to adopt unconventional admission arrangements.
	You wish to go into local authority coordinated admissions.

## New Schools Network

- 2.2 The [New Schools Network](#) (NSN) receives a grant from the Department for Education to provide free advice, tools, guidance and events to help you plan your approach to pre-opening, based on the experience of trusts that have opened schools successfully. For more information on NSN's support for free schools in pre-opening visit its website [here](#), or contact [open@newschoolsnetwork.org](mailto:open@newschoolsnetwork.org).

## 3. Governance

### Introduction

- 3.1 The [Governance Handbook](#) outlines the features of effective governance, which you should consider when formulating your governance arrangements, such as the following:
- **strategic leadership** that sets vision, ethos and strategy
  - **accountability** that drives up educational standards and financial performance
  - **people** with the right skills, experience, qualities and capacity
  - **structures** that reinforce clearly defined roles and responsibilities
  - **compliance** with statutory and contractual requirements
  - **evaluation** to monitor and improve the quality and impact of governance
- 3.2 Every free school is run by an academy trust – a charitable company limited by guarantee.
- 3.3 A trust's governance arrangements are laid out in its articles of association. The department provides [model articles of association documents](#) for groups to use. Church trusts should use the model articles [here](#). You will need to submit your trust's articles of association, using the relevant model articles, to your lead contact, along with the completed [confirmation of model articles checklist](#).

#### Top tips for governance arrangements

- the board of trustees must be constituted to have all the necessary skills for effective governance, but no bigger than necessary to achieve this
- the department's Governance Competency Framework sets out the skills, knowledge and behaviours needed for effective governance
- our strong preference wherever possible is for trusts to have at least five members
- we expect the majority, if not all, of your members not to sit on the board of trustees
- no more than 19.9% of your members and 19.9% of your trustees should be associated with the local authority
- no members and no more than one third of trustees should be employees of the trust

- 3.4 All academy trusts, as charitable companies, have both trustees and members whose role is described in detail in the Governance Handbook and summarised below.

**All academy trusts have both members and trustees**

**The academy trust** is a charitable company limited by guarantee

**Members** have strategic and ultimate control over the academy trust, including:

- the achievement of company objectives
- the appointment and removal of trustees
- the amendment of articles

**Trustees** are responsible for the operation of the academy trust, including:

- the three core functions of governance (see para. 3.8)
- ensuring compliance with charity and company law and funding agreement agreed with the Secretary of State
- delegating governance functions to LGBs as required

- 3.5 The founding **members** of the academy trust sign the trust's articles of association. Members are not involved in the governance of the trust but have powers to appoint and remove trustees and can make changes to the articles (although permission from the Secretary of State and/or the Charity Commission will be required in some cases).
- 3.6 The members' role is similar to that of the shareholders in a company limited by shares. As such, they have a role in ensuring that the governance of the trust is fit for purpose. Trusts must be established with at least three members, though it should be noted that trusts can have more should they choose to and the department's strong preference wherever possible is for trusts to have at least five members. This ensures that the trust has enough members to take decisions via special resolution (where 75% of members agree) without requiring unanimity while minimising circumstances in which a split membership prevents decisions being taken by ordinary resolution (where at least 51% of the members are in favour). Members must not be employed by the trust. Only 19.9% of members can be local authority associated (see [Governance Handbook](#) for further explanation).
- 3.7 We expect the majority, if not all, of members to be independent of the board of trustees. This enables members to exercise their powers more objectively and reduces the risk of unchecked 'group think' by the board.

- 3.8 The **board of trustees** manages the business of the academy trust and may exercise all the powers of the academy trust. The board should focus strongly on the three core functions of governance set out in the Governance Handbook: setting the strategic priorities for the school; holding the senior leadership team to account; and ensuring that money is spent properly and effectively.
- 3.9 The trustees must ensure compliance with the trust's charitable objects and with company and charity law. The board of trustees signs off the annual accounts and is responsible for adherence to the trust's funding agreement with the Secretary of State. It is the trustees who are therefore responsible for the trust's accountability to Parliament and to the Secretary of State as the Principal Regulator of academies as exempt charities.
- 3.10 The role of trustee requires commitment as well as the right experience and skills. The department has developed a [framework of the competencies](#) needed for effective governance.
- 3.11 Trusts need to put in place arrangements to ensure members and trustees avoid conflicts of interest wherever possible. Trusts need to be transparent, through a published register of interests, about all potential conflicts of interest and to manage them appropriately in line with the [Academies Financial Handbook](#) and Charity Commission guidance.
- 3.12 Our [latest model articles](#) for academies give significant flexibilities to [multi academy trusts](#) (MATs) with regard to setting up **local governing bodies (LGBs)**. Trusts may decide to set up one or more LGBs and decide the responsibilities delegated to them. This can vary from a high level of delegation to wholly advisory LGBs. LGBs can be set up at school level or across a group of schools.
- 3.13 Governance structures that span more than one school can bring significant benefits and allow you to make the most of the skills and experience of your best people.
- 3.14 Where a MAT is establishing a free school to be overseen by a local governing body, we will expect the board to be as rigorous in selecting its local governors and setting its operating arrangements as you would be in establishing a board of trustees for a single free school. If a MAT chooses not to establish a local governing body, it will need to demonstrate that it has the capacity to govern its new free school centrally. This might be more challenging if the MAT has only run mainstream academies and is setting up a special, alternative provision or 16-19 free school, or where the free school is some distance from your centre of operations, or simply because the volume of work will increase as each new school comes on line.

- 3.15 All new members, trustees (and the principal designate, when appointed) will need to submit a [Section I form](#) to the department's Due Diligence Team. In addition to this, all members, trustees and local governors (people who sit on LGBs in multi academy trusts) must hold an enhanced Disclosure and Barring Service (DBS) certificate to provide assurance on individual suitability. There is more information about due diligence in [section 4](#).

## Clerk to the trustees

- 3.16 You are required to appoint a clerk to the trustees who will administer board meetings and ensure that all the necessary legal procedures are followed. Each meeting of the board of trustees must be formally recorded and be clear on the matters discussed and the actions approved. There may also need to be formal documents produced and circulated before or after each meeting. These duties are all performed by the clerk. More information on [the role of the clerk and how to appoint a clerk](#) can be found on the gov.uk website.

## The 7 principles of public life

- 3.17 As explained in the [academies financial handbook](#), there are 7 principles of public life that set out the standards of behaviour expected of anyone who holds public office, including those who work in education. The 7 principles of public life are: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. You can find out more about the 7 principles of public life [here](#).

## Summary of the key tasks

### Making sure you have established your academy trust properly

- 3.18 The academy trust will be the signatory to the funding agreement and the legal owner of various assets. Setting up your academy trust allows you to open a company bank account, into which the department will pay your pre-opening grant (see section 6 on [funding](#)). You should have set up your trust before submitting your application.
- 3.19 The articles of association describe your trust's constitution and establish the framework of your governance arrangements. The department's model articles have been designed to follow best practice in corporate, charitable and school governance. This is why our expectation is that you will adopt our model articles to establish your academy trust. Trusts moving from single to multi academy trust arrangements will also be expected to move to the department's model master and supplemental funding agreements when the time comes to sign the funding agreement for their new free school.

- 3.20 Where the group is an existing academy trust, and therefore has its own articles of association, we would expect you to adopt the latest model if this is not the one being used. Where the group is a new trust, you should also adopt the latest model. We will discuss with you any particular governance issues that you will need to consider.
- 3.21 The model articles are flexible enough to accommodate most governance models adopted by free school proposers. Your lead contact will need to be satisfied that your articles of association are in line with our latest model and have not been changed before recommending that the Secretary of State enters into a funding agreement to open your free school.
- 3.22 Your lead contact will ask to see a governance plan to examine structure, roles and responsibilities, and details of internal controls, and to look at pen portraits of governors and any skills gaps and vacancies. The plan should be submitted with a completed [checklist](#), signed by the lead proposer or chair of governors, which ensures your plan contains the level of detail we require. Your lead contact will ask you throughout the pre-opening phase how trustees are managing the transition from pre- to post-opening. Trusts must escalate to their lead contact if they are experiencing difficulties developing the governance plan or if they think they will fail to submit a final version by the January before the confirmed provisional

### **Prompts for your governance plans**

#### **Members**

- Are there at least three (we strongly recommend five)? Are they credible? Do they meet guidelines around employees and LA associated individuals?
- Do the plans demonstrate a clear understanding of the role of the member (and what is not their role)?
- If a sponsor member is listed, is it a department approved sponsor? Corporate members are considered on a case-by-case basis – check with your lead contact

#### **Trustees**

- Are there between six and twelve trustees?
- Will there be any cross-over between members and trustees? Is this cross-over sensible (for example, will there be independent challenge)?
- Do the arrangements reflect the memorandum and articles?
- Is a chair of trustees in place? Are they credible (experience, skills)?
- Are the other trustees credible? Do you have Ofsted and academic results for other schools trustees have been involved with?
- Has a skills audit been carried out to identify skills gaps in the existing trustees? Will this be used as a basis for trustee training and recruitment?

opening date. It is possible that your lead contact will ask you to submit your plan before this time.

## Size of your board of trustees

- 3.23 The number of trustees you need should be determined by the needs of your particular free school. The board of trustees should only be as big as it needs to be to ensure it has the full range of skills it needs to be effective. Between six and twelve high-calibre trustees should be sufficient to manage your trust effectively. Any specialist knowledge can be provided as and when required by committees or other experts, such as the clerk to the trustees or the trust's legal advisers.
- 3.24 You will have indicated the size of your board of trustees in your articles. The articles require you to specify how many trustees will be appointed by the members and that you will elect a minimum of two parent trustees – or, in a MAT, the alternative of two parent local governors on each governing body, where the trust has them. When an insufficient number of candidates stand for election, the board of trustees will appoint the required parent trustees or local governors. The articles will also specify the number of trustees that will be appointed by the foundation or sponsor body, where the trust has one.
- 3.25 You should expect your lead contact to challenge you if the number of trustees set out in your articles is greater than twelve. The department will want to be assured that any larger body is justified, according to the likely demands of running your free school. Your lead contact may suggest that you ask some individuals to stand down if it is not clear that they will bring essential skills to the board of trustees, or if they judge the size of the group to be unwieldy.
- 3.26 In establishing a local governing body, you should ask yourself the same questions about size, skills and structures as you would when setting up a board of trustees for a single academy trust (SAT). You should also consider what, if any, powers and responsibilities should be delegated from the trust board to the LGB, avoiding duplication or overlap between the role of LGBs and both the board and MAT executive leaders in holding the school to account. These should be set out in a clear written scheme of delegation published on your website.
- 3.27 No more than one third of the total number of trustees can be employees of the academy trust. Our strong preference is that the principal/CEO of the trust should be the only employee who is a trustee. The number of trustees who are local authority associated cannot exceed 19.9%. This includes anyone who is a member of a local authority, or has been within the past four years, where that organisation has a responsibility for education, or is a district or parish council where there is a land or other commercial relationship with the trust.



## Ensuring you are recruiting the right people as trustees

- 3.28 You need to ensure that the people you recruit as trustees understand the requirements of the role and have the commitment, experience and skills to be effective. The department has published a comprehensive [framework](#) of the competencies needed for effective governance and you should consider this when appointing trustees.
- 3.29 The attributes [outlined in the framework](#) will be particularly important for the person you recruit as your chair of trustees. The chair's relationships with the principal and the trust members are key to effective accountability between the trustees and the school, and between the trust's members and board of trustees. The department and National Governors Association guidance '[Leading governors: the role of the chair of governors in schools and academies](#)' will provide a useful guide to the skills you need to look for in a chair, and help them settle into the role on appointment.
- 3.30 The trustees of a free school need to be assured that its financial systems, transactions and risks are being adequately assessed and addressed. Trustees are also responsible for establishing internal controls that recognise public expectations about governance, financial management and financial probity, and expectations on the stewardship of public funds by ESFA's accounting officer and Parliament. More information on how a free school can check that their financial and other controls are operating effectively can be found in the [Academies Financial Handbook](#).
- 3.31 Your lead contact will want to be clear about the skills and experience each trustee brings and what role they will fulfil. They will also want to see that there is sufficient diversity of perspective and skills among trustees, to provide challenge and scrutiny within the trust board.
- 3.32 Parent trustees are elected by other parents, not the trust, but they are expected to act in the best interests of the trust in the same way as all other trustees. They take on the same responsibilities as every other trustee, so it is vital that you do what you can to ensure that candidates understand the role and have the necessary skills and commitment (the term of office is four years).
- 3.33 Most free school proposers dedicate some of their PDG to trustee training – something that we strongly recommend you do. You will want to consider signing your chair of trustees up to the [leadership development programme](#) for chairs, run by the National College for Teaching and Leadership (NCTL). The programme is delivered by [licensed providers](#) in every region, with enrolment on a regular basis and courses taking around a year to complete. A new chair can therefore, start it during pre-opening.



## Finding trustees

- 3.34 [Inspiring Governance](#), delivered by the Education and Employers Taskforce in partnership with the National Governors Association, provides department-funded support to schools to help them find trustees.
- 3.35 In recruiting your board of trustees, you should aim to have recruited a capable chair and identified the majority of your trustees at least six months before your school's provisional opening date. This does not include parent trustees, who you can appoint during the first term post-opening. Your lead contact will challenge you on progress with trustee appointments throughout the pre-opening period and governance will be a key focus at your readiness to open meeting, where the chair will be expected to play a full part in the discussion, alongside the principal.
- 3.36 You may be tempted to appoint, as trustees, individuals who make a strong contribution to the pre-opening project team. This can be appropriate but only if you are confident that an individual will make a full contribution as a trustee in the longer term, based on the skills and experience outlined above. If not, there are other ways to involve supporters and give people a say over the running of the school, for example as non-trustees sitting on committees, or on informal working groups reporting to the trustees.

## Trustees' commitments, post-opening

- 3.37 You will need to ensure you have trustees with sufficient capacity, particularly in pre-opening and the early years of the trust, to undertake their commitment to the role, which can be significant.
- 3.38 The burden on individual trustees can be reduced through effective use of committees and working groups. They can work on behalf of the trustees to explore specific areas of interest, make recommendations to the board of trustees, or take decisions on the board of trustees' behalf.

## The transition from pre- to post-opening

- 3.39 During pre-opening some trustees take on additional responsibilities as part of the project team. This contribution can be vital and is welcomed, but it will be important to ensure that trustees understand the need to take a more strategic role as the free school moves towards opening. To support this, having a transition plan in place can help trustees to make the necessary adjustments.
- 3.40 Taking a strategic role is not just about handing over plans to the principal designate and senior leaders. A key task for your trustees during pre-opening will be to think about how they will monitor and assess the school's strengths,

weaknesses and progress, and how they will support and challenge the principal designate and senior leadership team.

- 3.41 To help your trustees begin to define their role as strategic leaders, we recommend focusing first on the [guidance in the Governance Handbook](#), which describes the role and duties of governors and trustees in academies. The All Party Parliamentary Group on Governance has published [a list of twenty questions for a governing body to ask itself](#), covering membership and skills, focus and activities. Some questions will be more appropriate as a prompt for review and continuous improvement, once the school opens, but most will be useful in helping you to plan during pre-opening. The Ofsted framework is also helpful on the wider picture of what the trustees are responsible for overseeing.

### Prompts for your governance plans

#### Board structure

- Is the board structure clear?
- Does it reflect the three strategic roles of a board (setting the vision, financial oversight, holding the school leadership to account for the educational performance of the school)?
- Is the level at which the responsibilities of the board will be executed or delegated to committees or individuals clear? For example, does the plan include a delegated decision planner?
- Have the terms of reference for committees been developed?
- Are there link trustees? In which areas? Is their role clear?

## Sub-committees

- 3.42 A key consideration will be how to make the most effective use of committees, including, if you are a MAT, local governing bodies and working groups. Trust boards are expected to have a finance committee, but can set up other committees covering other areas of business, such as curriculum and attainment.
- 3.43 Trustees can formally delegate decision-making powers to a committee, in accordance with the trust's articles, allowing it to make decisions on behalf of the board of trustees. Other committees may focus on specific issues and make recommendations to the trustees. The constitution of committees is for the trustees to decide (except where you do not have two parents on the board of trustees: MATs must then have two parents on each local governing body). Non-trustees can be co-opted onto committees and can vote on that committee, although (except in the case of local governing bodies) the majority of committee members must be trustees. Committees can therefore be a helpful way to bring

additional expertise to support the trustees. Your decision on whether to establish a committee should be based solely on the needs of your school and the skills of your trustees. It is also important to remember that the board of trustees retains overall accountability, regardless of what powers it delegates to any committee.

- 3.44 As an alternative to a standing committee, you could consider setting up a working group to offer advice to the trustees on specific issues or to give a voice to a particular group, such as parents or the community. Because of its informal nature it can be easier to stand down a working group once an issue has been resolved, which avoids unnecessary demands on people's time. You cannot delegate decision-making powers to a working group.

## Leadership

### Senior executive leader

- 3.45 You will be required to appoint a senior executive leader (SEL) – in practice also known as the Principal, Executive Principal or CEO. The SEL must be the head of the line management executive chain and held accountable by the board of trustees for the performance of the whole trust. The SEL should also be the trust's accounting officer. The SEL role must not rotate between individuals, although it may be filled by a job-share.
- 3.46 The appointment of a SEL does not require an additional person to be employed. In SATs, the SEL will be the principal; for MATs, the SEL could continue to be the principal of an individual academy within the MAT while also acting as CEO. It is important to remember that there is no 'lead school' in a MAT. The board must not favour or show allegiance to one school, but foster a common ethos and vision across the whole MAT. The appointment of an accounting officer or SEL does not remove the responsibility of the board of trustees for the proper conduct and financial operation of the trust.

### Accounting officer

- 3.47 Each free school trust must designate a named individual as its accounting officer. The trust, on appointment of the accounting officer (AO), is responsible for ensuring that the AO undertakes sufficient training to undertake the role. In single free schools, this should be the principal. If a free school is joining a MAT, it should be the senior executive leader.
- 3.48 The role of the accounting officer includes a personal responsibility to ESFA's accounting officer and to Parliament for the financial resources under the free school's control. The free school's accounting officer must be able to assure ESFA's accounting officer, Parliament and the public of high standards of probity

in the management of public funds. This requires the free school's accounting officer to have appropriate oversight, alongside the board of trustees, for the following:

- the establishment, maintenance and monitoring of the free school's internal control arrangements
- ensuring the free school's assets and property are under proper control
- reducing the risk of fraud or irregularity
- keeping full and accurate accounting records to ensure ongoing viability

3.49 The free school's accounting officer is also required to sign the following:

- a statement on regularity, propriety and compliance which is included in the free school's audited annual accounts
- an annual value for money statement explaining and demonstrating with examples how the free school has secured value for money

3.50 It is, therefore, very important that the trustees of the free school establish robust internal control arrangements leading to the efficient clearance of these documents.

3.51 More detail on the role of the accounting officer and how this can be discharged can be found on the [Institute of School Business Leadership's website](#).

## **Chief finance officer**

3.52 Free schools must demonstrate capacity in their governance and financial management structures to safeguard public funds. An integral element is that free schools must appoint a chief finance officer (CFO) who will act as the trust's finance director, business manager or equivalent, to lead on financial matters. However, in smaller free schools it may not be possible to justify the salary of a CFO. Trustees can elect to have this position filled by employing staff or contractors with relevant skills or knowledge at the appropriate time, provided that effective governance and robust financial management is preserved. More detail on the role of the CFO can be found on the [Institute of School Business Leadership's website](#).

## **Delivering assurance**

3.53 Academy trusts must have in place a process for checking their financial systems, controls, transactions and risks. This programme of risk review and checking of

financial controls can be managed in the way that you deem most appropriate in your circumstances. Options include:

- the appointment of an internal audit service (either in-house, bought-in or provided by a sponsor)
- the performance of a supplementary programme of work by the trust's external auditor
- the appointment of a non-employed trustee with an appropriate level of qualifications and/or experience to check the trust's internal controls, who neither charges, nor is paid by the trust for their work. (This appointment is not mandatory but is one way trusts are able to conduct their internal checks)
- a peer review, with the work being performed by the CFO, or a suitably qualified or experienced member of the finance team, from another academy trust, as an independent reviewer

3.54 Further information on internal scrutiny can be found in the [Academies Financial Handbook](#).

## Conflicts of interest

3.55 A conflict of interest can be defined as 'any situation in which a trustee's personal interests, or interests that they owe to another body, may (or may appear to) influence or affect their decision-making.'

3.56 It is inevitable that conflicts of interest will arise at some time. Even the perception of a conflict of interest can damage your trust's reputation. Your priority should be to ensure that your trustees understand their responsibilities for managing public money, which are set out in detail in the [Academies Financial Handbook](#) and include putting the right mechanisms in place to identify and manage conflicts of interest.

3.57 Conflicts are most likely to arise where trustees or their relatives intend to provide goods or services to the trust, or where a trustee's personal, family or professional relationships will, could, or might be seen to compromise their ability to act solely in the interests of the trust. The latter could be caused by the appointments you make, for example, a couple who take the role of chair of trustees and finance director, or where a trustee owns, is employed by or has a personal relationship with a third party seeking to contract with the trust. Your lead contact will challenge any appointment they feel creates an unacceptably high risk of a conflict for your trust, but the responsibility is yours and we will expect you to ensure that the following conditions are met:

- any individual or organisation represented as a member or trustee of your academy trust, or with influence over the trust through other means, understands that they will only be able to bid for contracts from the trust on an 'at cost' basis. This is in line with the approach taken by the department with approved academy sponsors
- trustees and members comply with the protocols set out at articles 6, 97 and 98 of the model articles, which ensure that decisions are taken without bias and that individuals who are 'conflicted' take steps to avoid influencing a decision
- trustees establish and maintain a register of interests to identify and record potential areas of conflict. The register should be completed and kept up to date by all trustees and any staff with budgetary control, covering them and their family members. This will show that your trust's decisions are being made free from conflict. The register of interests should be a standing item at every meeting of the board of trustees
- trustees and members understand the need for all procurement to follow an open and fair competition (see [section 7](#) for further information). The [Charity Commission](#) has also produced helpful guidance on identifying and avoiding conflicts of interest

3.58 The department will take very seriously any failure to manage conflicts of interest properly, whether these are real or perceived. Negligence in relation to this could ultimately lead to the cancellation of the project.

## Where can you get support?

3.59 The department's [National Leaders of Governance](#) (NLG) programme was set up to provide governing bodies in open schools with advice, support and coaching from experienced chairs of governors who have effectively developed leadership capacity on their own boards. The programme is also open to free schools in pre-opening, to help proposer groups put in place effective governance arrangements. NLG support is usually free. To identify an appropriate NLG lead, contact [governors.mailbox@education.gov.uk](mailto:governors.mailbox@education.gov.uk).

3.60 The gov.uk website provides examples of the challenge and support you can expect to receive from NLG, including helping the chair to set priorities, understand essential data and build a relationship with the principal, as well as more general advice on embedding effective procedures for the board of trustees and setting priorities. Ideally, you will have recruited your chair of trustees before drawing down support from NLG. You should also have a plan for trustee recruitment, based on an initial assessment of the skills needed to run your free school, and have given some thought to how your board of trustees will be structured.

## How we will work with you

- 3.61 Your lead contact will need confirmation that your trust has been established and that your articles are in line with the department's latest model. Your lead contact will check the proposed size of your board of trustees and request to see the governance structure. They will challenge you on any amendments, or if your proposed board of trustees looks unnecessarily large.
- 3.62 Your lead contact will ask you to confirm the names of any members and trustees you have already appointed. You are required to advise Companies House within 14 days of appointing a director (your trustees are your directors) and to advise the department within 14 days of any change (appointment or removal) of any trustee or member of the trust. The Charity Commission does not regulate academy trusts, so you should not seek to register the trust with the Commission or provide them with details of your members and trustees. Your lead contact will challenge you should any concerns arise about an individual's appointment, including where the department has a concern about a potential conflict of interest.
- 3.63 Your lead contact will expect you to have drawn up plans for how your board of trustees will operate, including plans for committees. They will also want to hear how your plans for recruiting a chair and other trustees are progressing. At this stage, your lead contact will also expect you to have put in place effective procedures for managing conflicts of interest, including setting up a register of interests.
- 3.64 Your lead contact will expect you to have resolved any concerns regarding the constitution or size of your board of trustees. You will have completed an initial trustee skills audit as part of your application and your lead contact will want to see evidence that you have reviewed this as new trustees are appointed and have confirmed which gaps remain. They will also want to know what plans you have to recruit and train your trustees to ensure you have sufficient skills and experience in place. They will be particularly keen to understand your plans to recruit a chair. They will also ask for updates on trustee appointments, and for a pen-portrait of each new trustee, setting out their skills and track record.
- 3.65 Your lead contact will expect you to have recruited the chair of trustees at least 8 months before your school's opening date – who should be working with the principal designate – and have identified or appointed the majority of remaining trustees and support staff (i.e. the clerk, and a responsible officer). As a minimum, you will need to have a workable plan to fill outstanding vacancies.
- 3.66 In recommending to ministers that they enter into a funding agreement, your lead contact will need to provide assurance and evidence that your governance arrangements are appropriate and rigorous, and that you have recruited high calibre trustees.

- 3.67 As the school moves towards opening, your trustees should be working with the principal designate on the board of trustees' key documents and protocols ahead of the first board of trustees meeting. These will include the school's development and improvement plan and a scheme of delegation (the document that confirms any delegation of spending and other decision-making powers from the board of trustees to committees or employees).

## LINKS TO FURTHER INFORMATION

- [Table 3 Governance: checklist of activities](#)
- [The role of the chair of governors](#)
- [Governance Handbook and competency framework](#)
- [Academies Financial Handbook](#)
- [Model articles of association](#)
- [The role of the clerk and how to appoint a clerk](#)
- [National Leaders of Governance](#)
- [Ofsted dashboard](#)
- [Leadership development programme](#)
- [Ofsted common inspection framework](#)
- [Twenty questions for a governing body to ask itself](#)
- [Charity Commission guidance on avoiding conflicts of interest](#)
- [MAT good practice guidance and expectations for growth](#)
- [NSN's resources and guidance about expanding academy trusts](#)



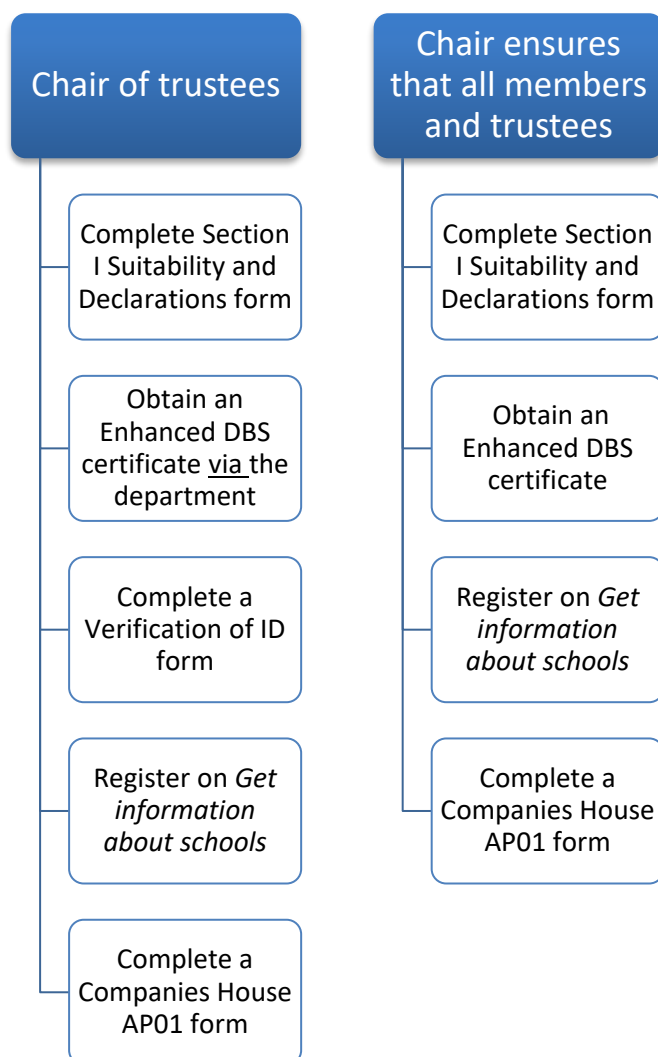
## 4. Due diligence

- 4.1 The department will carry out a number of checks on those applying to establish a free school. These will include due diligence checks, credit checks, Disclosure and Barring Service (DBS) checks and other checks necessary to ensure that free schools are only set up and run by those who are suitable and able to do so. There are several distinct actions for members and trustees to take as part of the due diligence process. You should engage with these requirements proactively and early on in the process to avoid delays in the Secretary of State signing a funding agreement with your trust or opening your school.
- 4.2 Everyone involved in the governance of an academy, or multi academy trust (MAT), holds an important public office and is required under their funding agreement to provide information about their members and trustees, as well as (in the case of MATs) those sitting on any local governing bodies (LGBs) that may be in place. A [national database](#) of all those involved in governance was implemented in September 2016, hosted in one easily accessible place via [Get information about schools](#) (formerly Edubase). This is part of the department's drive to increase transparency about who governs our schools. It will enable the department to more quickly and accurately identify individuals who have a role in governance. It will also make it easier for boards and the department to identify where individuals govern in more than one context.

### Summary of key requirements

- please engage with these requirements proactively and early on in the process to avoid delays in the Secretary of State signing a funding agreement
- the chair of trustees should take responsibility for ensuring that all sections of the [Section I Suitability and Declarations form](#) are complete, declaration pages are signed, and a passport-sized picture for each individual is attached in every application
- the chair of trustees **must** apply for an enhanced DBS certificate via the department. This DBS certificate will be counter-signed by the Secretary of State
- new members and trustees must obtain a new enhanced DBS certificate (even if they already have one which has been issued within the last two years)
- the chair of trustees must ensure that all other members and trustees have an enhanced DBS certificate which has been issued within the last two years

## Summary of the key tasks



### Section I Suitability and Declarations form

- 4.3 The department's carries out suitability checks on members and trustees of a company set up to run a free school. All new members and trustees (and principals designate, when appointed) must complete the [Section I Suitability and Declarations form](#). This does not apply to members of local governing bodies (LGBs), unless the individual is also a trustee. The chair of trustees **must** take responsibility for ensuring that all sections of the form are complete, declaration pages are signed, and a passport-sized picture for each individual is attached in every application. All completed documents should be scanned as a PDF and emailed to [due.diligence@education.gov.uk](mailto:due.diligence@education.gov.uk)
- 4.4 The [Academies Financial Handbook](#) will require academy trusts that have opened to keep the information held on *Get information about schools* up-to-date. The chair of trustees is responsible for ensuring that all changes are updated immediately. During the pre-opening phase if there are any changes to the

members and trustees, the chair of trustees **must** report these changes to the department by email ([due.diligence@education.gov.uk](mailto:due.diligence@education.gov.uk)).

- 4.5 New trustees will also need to register their details with Companies House by completing an [AP01](#) form. This is a legal requirement under the Companies Act 2006.

## Disclosure and Barring Service (DBS) checks

- 4.6 The Independent Schools Standards require that the chair of trustees **must** apply for an enhanced DBS certificate via the department. This DBS certificate will be counter-signed by the Secretary of State. This forms part of the department's checks to ensure that only suitable people are involved in establishing free schools.
- 4.7 All other members and trustees must hold an enhanced DBS certificate. New members and trustees must obtain a new enhanced DBS certificate, even if they already hold one. All other members and trustees must have an enhanced DBS certificate that was issued within the last 2 years. The chair of trustees must ensure that these requirements are met. The chair of trustees must also assess whether any offences or police information disclosed on a certificate are such that an individual is not suitable to hold the role of member or trustee. .
- 4.8 You can apply online via an umbrella body that will carry out the checks on your behalf. The Disclosure and Barring Service's website has a searchable database of umbrella bodies that offer an online service ([DBS umbrella body directory](#)). As volunteers, you will not be charged £44 by DBS for an enhanced disclosure. Umbrella bodies request a small payment to cover their administrative costs.
- 4.9 The department does not counter-sign DBS certificates for the principal designate and does not require proof that a certificate has been obtained. The principal designate will be an employee of the school. As such, the school is required to ensure that all relevant checks (including vetting and barring checks) are conducted in line with safeguarding requirements.

## Applying for an enhanced DBS check

### Chair of trustees

- 4.10 The chair of trustees (of the trust, not a chair of a local governing body) must hold an enhanced DBS certificate counter-signed by the department.

**Chairs of trustees who already hold a valid, counter-signed enhanced DBS certificate:**

Send a scanned copy of the certificate together with the declaration below to [due.diligence@education.gov.uk](mailto:due.diligence@education.gov.uk)

**Chairs of trustees who do not already hold a counter-signed and/or valid enhanced DBS certificate:**

If the chair of trustees does not already hold an enhanced DBS certificate, counter-signed by the Department for Education, which is dated within the past two years, they must complete both **an enhanced DBS application form and a verification of identity form** and send both in the same envelope to the department.

The chair of trustees must request a new DBS certificate by following this route:

1. To download a copy of the verification of identity form and its accompanying guidance please follow this [link](#).
2. Once completed ensure the verification form is signed by a professional (see below). **The following people can be asked to confirm your identity:**
  - Head teachers - but **NOT** the head of the school for which the check is being undertaken
  - Judges
  - Magistrates
  - Barristers
  - Solicitors
  - Civil Servants - Executive Officer grade or above
  - Police Officers

A relative cannot confirm your identity even if they fall into one of the acceptable professions listed above.

3. Phone DBS on 03000 200 190. Ask for a DBS Enhanced Disclosure application form, and state it is for the Department for Education – **reference number 20881800002** – and that you are a volunteer.
4. Complete the DBS form in black ink and capital letters, following the instructions on the form.
5. Do not complete sections w, x, y and z (the department will complete these).
6. Make sure that you include your email address and telephone number so that we can contact you if further information is required.

7. Post the Verification of identity form and the DBS application form at the same time by registered post to: Due Diligence Team, Department for Education, 4th floor Sanctuary Buildings, Great Smith St, London, SW1P 3BT.
8. We do not require you to post identity documents to us at any stage of the process.
9. Once you receive your certificate, email a scanned copy of the certificate together with the signed declaration below to [due.diligence@education.gov.uk](mailto:due.diligence@education.gov.uk)

**Declaration:** I confirm that the certificate provided is an exact duplicate of that returned to me by the Disclosure and Barring Service (DBS). I understand that any false declaration or alteration of this certificate would be a criminal offence under Section 123 of the Police Act 1997.

Full name:.....Date:.....

## All other members and trustees

### Members and trustees who already hold a valid enhanced DBS certificate:

- members and trustees (other than the chair of trustees) who hold an enhanced DBS certificate dated within the past two years from any registered body should email a scanned copy of the certificate to the chair of trustees. The Secretary of State requires the chair to ensure that all members and trustees present an up-to-date DBS certificate at all times, and the department reserves the right to request sight of members' DBS certificates at our discretion
- **all new members and trustees must apply for an enhanced DBS certificate via an umbrella body, using the [DBS umbrella body directory](#)**

Once you receive your certificate, email a scanned copy of the certificate, together with the declaration above, to the chair of trustees.

## LINKS TO FURTHER INFORMATION

- [Table 4 Due diligence: checklist of activities](#)
- [Section I Suitability and Declarations form](#)
- [Companies House appointment of director form AP01](#)
- [gov.uk website: DBS checks](#)

## 5. Statutory duty to consult

- 5.1 By law, your trust must meet its statutory obligation to consult under [Section 10 of the Academies Act 2010](#) about your free school proposal.
- 5.2 Section 10 of the Act requires the trust to consult with the people they think appropriate on whether to enter into the arrangement with the Secretary of State. The arrangement in question is the funding agreement that needs to be signed before your school can open.
- 5.3 The statutory consultation will inform stakeholders and the local community about the project. This process is very useful as trusts will be able to use and build on the feedback and suggestions they receive. It will also help to raise awareness of your project and your marketing activity could help to increase pupil numbers. Trusts must escalate to their lead contact if they experience significant opposition by local residents during or following the consultation, or if the local authority becomes unsupportive of the project.
- 5.4 The duty to consult rests solely with the trust. The department does not direct or provide specific advice to trusts on how you should go about it. When the time comes to decide whether to enter into a funding agreement with your trust, the thoroughness and transparency of the consultation will form a key part of that decision. There are some general themes you might want to think about, which are set out in the following paragraphs.
- 5.5 As the Secretary of State will not be entering into a funding agreement to fund a nursery that is part of your free school, the requirement on the trust to carry out a section 10 consultation in respect of the nursery does not apply. However, it would be useful to mention the nursery as part of your consultation, as responses could help provide evidence of viability or highlight risks.

### Summary of the key tasks

- 5.6 It is important to invest some time to plan how you will run your consultation, to ensure this complies with your statutory duty. Your consultation must be thorough and transparent.
- 5.7 You also need to decide whether you will carry out the consultation yourself or bring in additional resources to do this on your behalf. Above all, you will need to agree when to carry out your consultation, how long it will take, whom you will consult with, the policies and information about your school on which to consult, and how you will collect responses to the consultation. You will need to be ready to consider any responses received and whether it is appropriate to adjust your plans, taking into account any concerns resulting from the consultation.

- 5.8 You should report and present your findings and conclusions to those that have responded, to the local community and to the department. The report should be submitted to the department with a completed [checklist](#), signed by the lead proposer or chair of governors, which ensures your plan contains the level of detail we would want to see.
- 5.9 The key question you should ask those you consult with is **whether your trust should enter into a funding agreement with the Secretary of State to open your free school**. To enable people to provide an informed response to this question, it is recommended that you provide a link to the appropriate model funding agreement (which can be viewed here for [SATs](#) and [MATs](#)) which you will use for your particular school.
- 5.10 **Who needs to be consulted?** The Act states that you should consult ‘such persons as the trust thinks appropriate’, which will include all groups or people upon whom you believe the opening of your school may have an impact. Examples include nearby schools, the local authority, any surrounding local authorities, groups with an interest, the local population and faith groups.
- 5.11 **How long should the consultation be?** This is not specified, but must be adequate to allow people time to consider the proposal and respond.
- 5.12 **When should you consult?** It must be done before the funding agreement can be signed, but when plans are sufficiently advanced, to enable those whom you consult to have sufficient understanding of the school that you are proposing. Examples include admission arrangements, special educational needs (SEN) and other policies, and the site for the school (or at least a general location).
- 5.13 **How should you consult?** Many trusts set up a website specifically for the consultation, but you must take account of those people without access to a computer. It is important that you give as many people as possible an opportunity to respond. You may therefore use a variety of channels, such as mailshots, leaflets, open meetings, media announcements or a combination of all of these. You may also want to consider translating the consultation materials if the school being proposed is in an area with a diverse population.
- 5.14 **How do you deal with responses?** You need to build in time to consider responses and whether it is appropriate to make any changes or additions to the plans for the school.
- 5.15 **How do you report on the outcome?** You will need to consider how you will publish the outcome of your consultation (for example by providing the website address where the results will be published). Once the responses to the consultation have been analysed you will need to consider how the findings will be presented to both the department and other interested parties. The most effective

way is to produce a report of the key findings that provides quantitative and qualitative information, details of methods, timings, who you consulted, the questions you asked and any steps that have been taken because of the responses.

## How we will work with you

- 5.16 When the time comes to decide whether to enter into a funding agreement with your trust, the thoroughness and transparency of the consultation will form a key part of that decision.
- 5.17 The Secretary of State is also required by law, under Section 9 of the Academies Act 2010, to complete an assessment of the impact the opening of the free school will have on maintained schools, academies, institutions within the further education sector and alternative provision in the area in which the institution is proposed to be, or is, situated. This will incorporate any related evidence from your consultation. You do not need to do this; your lead contact is responsible for carrying out the impact assessment at the appropriate time.
- 5.18 The New Schools Network has produced some [helpful guidance](#) on how to carry out a Section 10 consultation.

## LINKS TO FURTHER INFORMATION

- [View Table 9 Statutory consultation: checklist of activities.](#)
- [Section 10 of the 2010 Academies Act](#)
- [Model funding agreements](#)
- [NSN pre-opening information](#)



## 6. Funding and finance

### Introduction

- 6.1 This chapter provides information on the project development grant (PDG), financial governance and accountability, risk protection arrangements, and school financial planning.

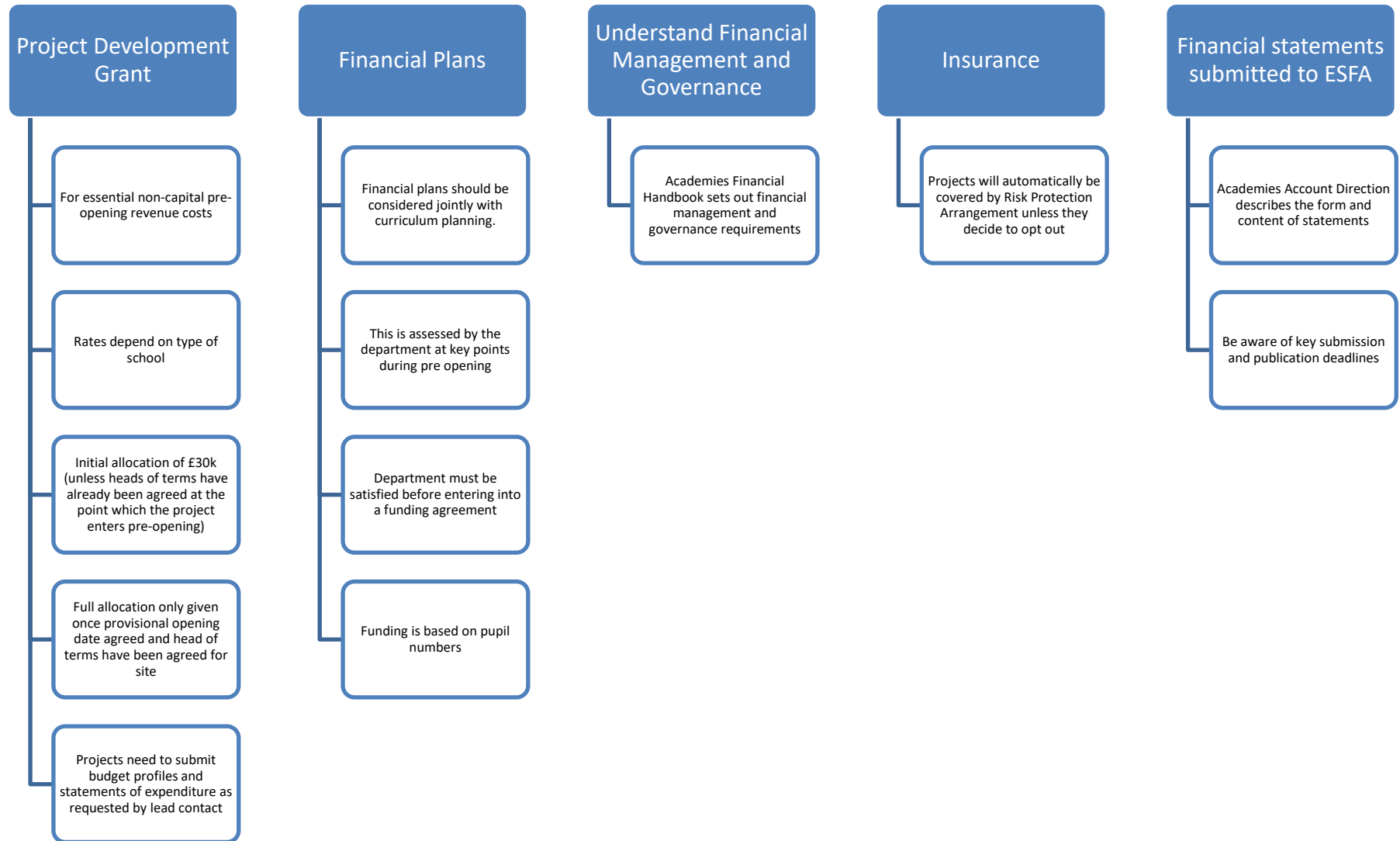
### Key messages

- the funding that projects receive is public money, and you will need to be able to demonstrate that the way you use it meets high standards of propriety, is transparent and defensible, and secures good value for money
- you must effectively plan and manage expenditure during pre-opening – including meeting the terms of the PDG agreement
- you must put in place robust governance arrangements and accounting procedures to allow the school to manage public funding responsibly once open
- you must develop a financial plan that demonstrates the school's viability on opening within the available funding based on a realistic and evidenced number of pupils, realistic staffing requirements and an up-to-date estimate of expenditure. This should be considered jointly with the development of your curriculum

### Risks

- 6.2 Schools are funded on the basis of pupil numbers. When a school recruits fewer pupils than it is funded for, ESFA will recover the associated funding. As such, schools that have under-recruited pupils can experience financial viability issues if their plans do not have sufficient flexibility. The department will not open a school where it does not believe the school will recruit enough pupils to be financially viable. The pupil recruitment, funding arrangements and risks involved in opening special and alternative provision free schools are different, but the department will assess these risks as well and will not open such schools if the financial viability is in doubt.
- 6.3 Projects in pre-opening receive PDG to cover all pre-opening costs (minus capital). If a trust runs out of PDG, the department will not provide additional funding, except for in exceptional cases.

## Overview of key funding areas and issues



## Essential information you need to provide to the department

6.4 Throughout pre-opening, projects will be required to provide the department with the following:

- budget profiles and statements of expenditure for PDG
- financial plans with supporting assumptions, demonstrating the school's financial viability when it opens

## Pre-opening funding

6.5 In the run up to opening, the department will provide a fixed-rate PDG to cover essential non-capital costs up to the point at which the school opens. Your trust will need to profile and effectively manage spend of the PDG funding. The rate of funding is set out in the [table](#) below. You will be issued with a grant agreement setting out the terms under which the PDG will be paid. You must read these terms before signing the agreement and return it to the department. Your trust will need its own bank account into which the funds can be paid. You cannot use a personal or other similar bank account. If your school is part of a MAT, the MAT account may be used.

6.6 The PDG will be formed of two elements. You will be given an initial allocation of £30k and the balance of the PDG funds will be paid in instalments after the provisional opening date has been agreed. This initial £30k should be sufficient to meet all the pre-opening costs likely to be incurred by your trust up until the site solution is confirmed and we have agreed a provisional opening date with you in writing. The exception to this is for projects where heads of terms for site have been agreed at the point which the project enters pre-opening – in these cases, the initial £30k allocation will not be provided separately and will instead be included in the overall PDG payment schedule. The remainder will be allocated at this point, with the schedule of payments modelled around the budget profile provided by the academy trust for the remainder of time in pre-opening.

6.7 You must provide regular budget profiles and statements of expenditure throughout the pre-opening phase. Your lead contact will advise when it will be necessary to provide these returns, but, as a minimum, we will expect you to provide an annual budget profile and statement of expenditure each April. Details of future returns and templates are provided as part of the grant agreement.

6.8 Future payments will be delayed or stopped at any time if the terms of the grant are not upheld (for example, by not making timely expenditure returns or through inappropriate use of public funds, or if your project does not make satisfactory

progress). You must escalate to your lead contact if you forecast to overspend on the PDG.

- 6.9 If your project is cancelled before the school opens, you must not incur any further expenditure and must return any unused PDG funding, in accordance with the conditions of grant set out in the grant agreement.
- 6.10 If you have any PDG funding left over when the school opens, you should roll this over into the school's budget. Unspent PDG cannot be held by the trust. The level of PDG has been set based on previous free schools' costs in the pre-opening phase. We would not anticipate that schools will roll substantial amounts into their school's budget beyond any unspent contingency, which is likely to be small. We do not expect schools to assume that they will carry forward any funding into their funding plans for the open school.
- 6.11 After opening, free schools can reclaim VAT on expenditure incurred during the pre-opening phase from HMRC. More information can be found on the [HMRC website](#). You should seek advice from your local tax office on reclaiming VAT once open – the department and your lead contact are not able to advise on tax policy. The school can also retain any VAT it recoups from HMRC on PDG expenditure. (Note: the terms of other grants may differ. For example, schools must return any VAT reclaimed from capital grant expenditure provided by the ESFA sites team, in accordance with the terms of that grant from ESFA).

## Project development grant rates

- 6.12 The amount of PDG you receive will vary depending on the type of school you are opening (for example, secondary, primary, AP). Independent schools receive a much smaller allocation, reflecting the fact that they join the programme with much of their staff and other resources in place.
- 6.13 Trusts opening a single school in an academic year will receive the full PDG rate for the type of school they are opening. Trusts that have been approved to open more than one school in a given academic year are expected to realise efficiencies in areas such as project management, educational services, administration and office costs. They will therefore receive full PDG funding for the first school and a reduced amount of PDG funding for each additional school.
- 6.14 Where you are opening multiple schools, the amount of PDG will be determined by the provisional opening date of the school agreed with the department. This is regardless of when the project was approved to pre-opening. The current rates which are payable to projects in the pre-opening phase are set out in the table below. **Please note that these amounts are subject to review and may change.**

## Project development grant rates

Type of school	PDG funding for first school opening in a given academic year	PDG funding for each additional school opening in the same academic year
Primary	£220,000	£150,000
Secondary and all-through	£300,000	£200,000
Special	£220,000	£150,000
AP	£220,000	£150,000
16-19	£250,000	£170,000
Independent converters / LA presumption schools	£25,000	£25,000

- 6.15 The numbers of schools that a trust is opening in a single academic year will include any schools approved to pre-opening from 2014.
- 6.16 In cases where the provisional opening date is deferred, additional funding will not normally be allocated to the project. The project will retain the current PDG grant rate that it is already receiving (although the payment profile may be amended to reflect the longer pre-opening period). Trusts will need to re-profile their budget expenditure plans and resubmit them to the department.

## Planning your project development grant budget

- 6.17 You must ensure that all spending is essential to the development of the school during the pre-opening phase and provides good value for money. The department does not expect to provide any other funding to meet pre-opening costs. You should therefore think very carefully about how to allocate your budget before committing to any expenditure.

- 6.18 The PDG is intended to cover all revenue costs up to the opening of the school. Capital costs to secure and develop the school's site and ICT to support the curriculum are provided by the ESFA and should not be funded from the PDG. Books and other curriculum materials required on opening may be purchased in the month before opening, using an advance of the materials component of the post-opening grant.

Project  
management

Educational  
services

Staff  
recruitment

Salary costs

Marketing  
costs

Consultation  
and open  
evening costs

Pre opening  
office costs

Administration  
of admissions

Trustee  
induction and  
support

Management  
information  
system

6.19 Typically, projects will use their PDG funding to pay for the following:

- project management (support to coordinate all work leading to the development of the school, excluding site related issues)
- educational services
- staff recruitment (including the principal designate)
- salary costs (which often include the principal designate, finance/business manager and administrative support in advance of opening)
- marketing costs
- consultation costs and open evening costs
- pre-opening office costs
- administration of admissions (including applications and appeals)
- trustee induction and support

6.20 Many projects also use their PDG to purchase the financial and management information system that the school requires in advance of opening. Where possible, it is good practice to maintain a contingency in your initial financial plan to cover unexpected costs. As set out above, if any grant funding is left when the school opens it should be rolled into the school's budget.

6.21 It is up to you to decide how you allocate your PDG spending. Requirements vary from project to project depending on the local context, the school and the wider resources available to the trust. You may want to look at these [sample pre-opening budgets](#) for mainstream primary and secondary schools and think about the different needs of your project to develop your own budget. We cannot guarantee that you can deliver the activities for the figures shown and, if some costs are higher, you will need to adjust elsewhere. The New Schools Network provides a [budget planning tool](#), which you can use to plan your spending during pre-opening, which includes examples of how different types of proposers have used this funding in the past.

6.22 The funding you receive is public money and you will need to be able to demonstrate that the way you use it meets the highest standards of propriety and secures good value for money. The principles of good governance described below should apply throughout the project to open the school.

6.23 One person within the trust should have overall responsibility for managing the financial plan and PDG expenditure. They should be accountable to the trust and the department for ensuring that funding is used properly and that the budget is managed well.

6.24 You will receive the PDG grant letter shortly after the project enters the pre-opening phase. Your lead contact will monitor the progress of the project and check expenditure returns are received and appropriate. They will challenge projects, where necessary, on their use of PDG funding, and can arrange for payments to be delayed or stopped where necessary.

#### Academy trust's responsibilities

Recruit a Chief Finance Officer

Form a Finance Committee

Appoint an Accounting Officer

Approve the first year's budget

Develop key policies

## Governance and accounting arrangements

6.25 Before opening, your trust will need to put in place effective systems for managing the public funding that it receives. Putting good governance arrangements in place at this stage will help develop a strong framework for the school on opening.

6.26 You will need to ensure that the trust's spending choices and decisions are in the school's best interests and are transparent and defensible. Your trust will need to be able to demonstrate sound financial procedures – the capacity to handle public money, and good governance arrangements. You must consider the potential for conflicts of interest and have an agreed policy in place setting out how you will deal with them. Your lead contact will consider the progress made towards developing effective financial governance arrangements for the open school. You must escalate to your lead contact if you have identified any potential conflicts of interest when spending your PDG.

6.27 You will need to agree how you will manage payments and any related decisions, such as how you will award contracts. You will also need to retain original copies of all receipts, invoices, contracts and tender documents, which the department may review at any time.

6.28 The academy trust will need to have a robust framework to manage its funding and ensure proper accountability and procedures are maintained. At the pre-opening phase, key tasks to deliver this include the following:

- setting out the role of the Chief Finance Officer (for example, a finance director or business manager) and recruiting an appropriate person
- forming the finance committee of the governing body, agreeing its terms of reference and making sure that the committee's membership includes appropriate financial expertise and a process for checking its financial systems, controls, transactions and risks. This programme of risk review and checking of financial controls can be managed in the way that the trust deems most appropriate to their circumstances. Further information on internal scrutiny can be found in the

[Academies Financial Handbook](#)

- ratifying the appointment of the accounting officer (normally the principal for a SAT and the SEL for a MAT)
- securing formal governing body approval for the first year's budget
- developing policies and manuals covering procurement (including competitive tendering), delegation of responsibilities, financial procedures, internal control (including a split between purchasing, authorising and payment roles) and management of conflicts of interests

6.29 The [governance](#) section of this guide gives further advice on some of these tasks.

## Financial health and efficiency

6.30 Efficient schools make the best use of resources, ensuring that every pound is used to have maximum impact for their pupils and the school. Schools that do this well tend to:

- base their financial planning on delivering educational outcomes, rather than as a separate consideration
- have a strategic approach towards financial planning for the longer term (3 – 5 years)
- deploy their staff effectively and efficiently, linked to their long-term plan
- have robust challenge from financially skilled governors and head teachers
- have skilled staff responsible for managing finances
- have transparent financial systems and processes that encourage constructive challenge within and between schools

6.31 The [Schools financial efficiency: top 10 planning checks for governors](#) guidance contains information to help schools manage their resources efficiently to deliver good educational outcomes. In particular, you will want to use the key metrics contained within the planning checks to consider the affordability and value of your proposed curriculum and staffing plans.

## The Academies Financial Handbook

6.32 The [Academies Financial Handbook](#), together with the funding agreement, sets out the financial management and governance requirements for academy trusts.

6.33 You must comply with the handbook throughout the pre-opening phase and once open. This is outlined within the grant agreements underlying any funding you



receive from the department. Non-compliance with the handbook is considered a breach of contract and may trigger various sanctions.

- 6.34 The handbook includes requirements in relation to financial oversight, financial planning, internal control, financial monitoring and management and proper and regular use of public funds, as well as a number of other specific matters. The handbook also sets out the audit requirements for academy trusts.
- 6.35 The handbook is aimed at trustees, accounting officers (principals and SELs), CFOs (finance directors and business managers), clerks to the board of trustees, and local governing bodies of MATs and auditors.
- 6.36 The handbook clearly articulates that the accounting officer is personally responsible to Parliament and to the accounting officer of ESFA for the resources under their control. This personal responsibility extends to ensuring regularity, propriety and value for money. The accounting officer also has responsibilities for keeping proper financial records and accounts, and for the management of opportunities and risks.

## Financial statements

- 6.37 Free schools, including those in the pre-opening phase, with a signed funding agreement must submit audited annual report and financial statements to ESFA, for each year ending 31 August, by 31 December. The [Academies Accounts Direction](#) prescribes the form and content of the financial statements. Prior to signing the funding agreement financial statements should be prepared in accordance with company law. Trusts can no longer extend their first accounting period, so this would be from the date of incorporation to 31 August.
- 6.38 Trusts should set their [accounting reference date](#) to 31 August at Companies House. This is the date to which their financial statements will be produced.
- 6.39 The exception to submitting audited financial statements is for dormant accounts. Trusts that have been dormant since incorporation can prepare dormant accounts. These do not have to be audited but still need to be submitted to Companies House and (if the trust has signed its funding agreement) to ESFA.
- 6.40 This guide does not substitute for the full requirements in the [Academies Accounts Direction](#).
- 6.41 The timetable for submission and publication of accounts, including how accounts are submitted, is set out in detail in the Accounts Direction. Key deadlines are given below:
- **by 31 December** – trust to send audited financial statements, online cover form, and auditor's management letter, to ESFA

- **by 31 January** – trust to publish accounts on their website
- **by 31 May (i.e. within 9 months of the end of the accounting period)** – trust to file their audited accounts with Companies House. Further information can be found on the [Companies House website](#)

## Other financial returns

6.42 Trusts must also submit the following financial returns to ESFA once open:

- **Budget forecast return** – submitted to ESFA by 28 July or 6 weeks after receiving the final funding letter (whichever is the later)
- **Academies accounts return** – submitted by 19 January, covering the previous trust financial year (ending 31 August)
- [Financial management and governance self-assessment](#) – submitted to ESFA within four months of opening. The self-assessment highlights the main requirements academies must have in place soon after opening

6.43 Trusts are responsible for keeping up-to-date with the latest deadlines and requirements. More [information](#) on financial returns is available on gov.uk

6.44 You can also keep up to date through the ESFA [e-bulletin](#).

## Insurance cover: Risk Protection Arrangement (RPA)

6.45 You are eligible to benefit from the department's risk protection arrangement (RPA) as an alternative to commercial insurance, whereby the UK Government funds cover any losses that arise. RPA cover will be provided free of charge in pre-opening. The current rate for open schools is £20 per pupil/place. The RPA is a simple, once-only activity and eliminates the need for time-consuming procurement of commercial insurance cover.

6.46 It is not compulsory to enter into the RPA scheme and you are free to make your own commercial insurance arrangements. However, the default is that you will join the RPA scheme, following the kick off meeting, unless you tell us otherwise. If you do not want to join the RPA scheme, please email your lead contact.

6.47 If you do not think the RPA cover is right for you, we would welcome your feedback, so that we can consider whether any changes to the current RPA offer that could be made in the future. Further information about RPA and the membership rules can be found [here](#).

## Funding for open schools

- 6.48 The department will assess the school's financial plan before entering into a funding agreement and in advance of issuing your indicative funding letter, which will set out the level of funding, you should expect upon opening. The department will not enter into a funding agreement if it is not confident that the school has a viable financial plan. Trusts must escalate to their lead contact if they are unable to submit a viable financial plan.
- 6.49 Developing your school's financial plan should be an ongoing process, which should be considered jointly with the development of your curriculum. Plans should be updated as further details of funding arrangements become available, staff are appointed, site plans are firmed-up, the number of pupils become clearer and other costs are more confidently established.
- 6.50 Further updates should take account of the number of staff required to cater for these pupils. This may change over time and updates should ensure staffing structures are affordable and appropriate.
- 6.51 The assumptions boxes on the plan should be used to set out the basis for any estimates of pupil numbers and pupil characteristics, income from sources other than ESFA, and expenditure (including service contracts and salaries).
- 6.52 Guides to free school revenue funding are available on the gov.uk website, for [mainstream](#), [16-19](#), [special](#) and [alternative provision](#) free schools. This explains how your funding will be calculated and also contains details of how the post-opening grant – which is provided to new schools as they build up to full capacity – will be calculated.
- 6.53 The free school financial templates are updated in spring each year to reflect the changes in national and local funding rates. The latest version of the templates can be found [here](#). The rates in the template you used when you made your application may not be the ones for the year in which you will open. You will need to ensure that you refresh your financial plan in the spring before opening when the new rates are available. Your lead contact will keep you updated on any changes. The approval of your application to the pre-opening phase is therefore conditional on you submitting revised financial plans at key points during pre-opening so that the department can be assured that your school is on-course to be financially viable. In particular, you may be asked to share your current financial plans with the department before entering into a funding agreement, which should also include a version modelled around the lowest viable number of pupils for your first year of opening. You will be asked to share your current financial plan using accepted offers in the spring before opening in order for draft funding allocation packs to be issued.

- 6.54 Your lead contact may ask you to revise your plans or give further information if needed to show that the school will be viable and efficient in using resources to deliver pupil outcomes – both during your early years of operation, when pupil numbers are building up, and when your school is operating with all year groups. They will need to see that the school has developed robust and consistent curriculum, staffing and financial plans, and strong financial governance arrangements. Plans should demonstrate clearly how the school will minimise non-staff costs, and that the school will be efficient, viable and not go into deficit in any year.

## **Mainstream schools: developing a viable financial plan**

- 6.55 Once the school is open, it will be funded by the ESFA. The funding for free schools is set at an equivalent level to funding for all other state-funded schools. Funding is largely based on a payment for each pupil who attends the school, but the detailed funding methodology may vary over time with changes to the funding of the school system as a whole.
- 6.56 In September 2017, the Government announced the final details of the national funding formula (NFF) for schools, which will come into place from April 2018. The [NFF policy paper](#) sets out how the formula will allocate funding over 2018-19 and 2019-20. It is important to note that in these years the NFF will calculate notional allocations for schools, which will be used to set the total schools funding for each local authority. Local authorities will continue to set local formulae, which will determine individual schools' budgets in their areas. Under the NFF, new schools will be protected so that they are funded in line with other local schools. Schools already in the pre-opening phase and those approved as part of waves 13 and 14, this will be protected against the funding they would have received under the local funding formula in 2017-18. We will update this position in line with any future changes in the NFF protection. Guidance on funding for pre-16 schools can be viewed [here](#).
- 6.57 Financial (and, therefore, educational) viability is dependent upon you admitting a sufficient number of pupils. In order to provide a sustainable, broad and balanced curriculum, there is a presumption that primary provision should have a minimum of two forms of entry of 30 pupils, and secondary provision have a minimum of four forms of entry of 30 pupils. We do not expect financial plans submitted to the department to be based on fewer pupil numbers. If you expect this to be the case, then please contact your lead contact to discuss the rationale.
- 6.58 Once open, if the October schools census shows the school has not admitted the predicted number of pupils, any excess funding will be clawed back in the following academic year. Where more pupils are recruited than have been funded

for, ESFA will carry out an in-year reconciliation and pay any additional funding in January/February of the current academic year.

## **16-19 free school: developing a viable financial plan**

- 6.59 Once the school is open, it will be funded by ESFA. 16-19 free schools are funded on the basis of the post-16 national funding formula.
- 6.60 Funding is largely based on a payment for each student who attends the school, but the detailed funding methodology may vary over time with changes to the funding of 16-19 provision as a whole. Financial, and therefore educational, viability is dependent upon you admitting a sufficient number of students.
- 6.61 Securing financial viability can be particularly challenging for 16-19 institutions. If you are proposing a 16-19 school with a broad curriculum of A levels (or A levels and vocational qualifications), you will need to consider whether this would be achieved by being the following size:
- a larger school of up to 1000 students
  - a smaller school within a MAT, so that nearby schools in the trust can share expertise, teaching staff and/or other resources, such as back office services, to produce economies of scale, or where existing local 11-16 schools in the MAT could be 'feeder' schools for the 16-19 school. A school in a MAT where only back office services are shared might need to have up to 900 students, whereas one where there was also extensive sharing of teaching staff and facilities with neighbouring schools in the MAT might be viable at a smaller size
- 6.62 If you are proposing a smaller specialist school with a narrow or niche curriculum, you will be best placed to achieve this where you have significant support from a partner organisation that will help to attract students. We would expect a suitable partner organisation to be well-established, stable and known as a leader in its field. The partner organisation will need to commit to close involvement with the school, such as through financial support or by providing teaching for courses in the specialist area or additional opportunities for students, such as high quality work experience or access to teaching in a different institution.
- 6.63 If you are proposing to include a sixth form within a secondary school, you should consider the following:
- size – an expectation of around 200 students or more, either in the institution or through partnership
  - breadth – an expectation that a student should be able to choose from around 15 A levels across a range of subjects, either in the institution or through partnership

- demand – including any shortage of post-16 places, and assessment of the quality of level 3 provision overall in the area and the impact of the new provision on other providers
  - financial viability and value for money – including testing financial resilience should student numbers fall and considering the degree and impact on 11-16 education of cross-subsidisation of funding from the school's other budgets
- 6.64 You may be eligible for a programme weighting funding uplift if you offer a curriculum that is particularly expensive to deliver, such as engineering. You may also be eligible for funding uplift if you anticipate higher disadvantage levels than the LA average. If these criteria apply, you will be asked to provide a business case to establish any additional funding you might attract in order to reflect the extra costs associated with technical programmes of study or high levels of disadvantage.
- 6.65 Please note, an adjustment of -30% must be applied to financial plans to take account of historical drop out between accepted offers and start date, due to students being able to hold multiple offers.
- 6.66 Once open, if the October schools census shows the school has not admitted the predicted number of pupils, any excess funding will be clawed back in the following academic year. Where more pupils are recruited than have been funded for, ESFA will carry out an in-year reconciliation and pay any additional funding in January/February of the current academic year.

### **Special free school: developing a viable financial plan**

- 6.67 Once the school is open, funding will be calculated and paid by both ESFA and local authorities commissioning places at the school.
- 6.68 Funding in special free schools comprises:
- funding from ESFA for full-time equivalent places. The flat rate per-place funding will be paid for a number of places, which will be subject to regular review, and dependent on local authority commissioning and take up of the places. The detailed funding methodology may vary over time as changes are made to the school and high needs funding systems
  - per-pupil top-up funding paid by the local authority – top-up funding agreed between the school and commissioning local authority and paid to the school directly by the local authority for each pupil with either a statement of special educational needs (SEN) or Education Health and Care Plan (EHCP)
  - a per-pupil basis for pupils without a statement of SEN or EHCP, based on the number of such pupils on roll and their characteristics. The per-pupil funding level

will be based on the local level of funding for pupils without a statement of SEN or EHCP in mainstream schools

- 6.69 Special free schools, like other special schools, can also receive funding from services directly commissioned by local authorities – for example, to provide specialist teaching support for pupils in local mainstream schools.
- 6.70 In all cases, the income that special free schools receive and their future viability will depend on providing the places needed locally and on local authorities' willingness to place pupils with EHCPs at the school and pay for the costs of the special provision on offer. Local authorities often have standard rates of top-up funding for pupils with different levels of need, which they use for maintained special schools and special academies. We have encouraged local authorities to publish information about their top-up funding arrangements. Special free schools should expect to operate on similar levels of funding from local authorities.

### **Alternative provision free school: developing a viable financial plan**

- 6.71 Once the school is open, it will be funded partly by ESFA and partly by local authorities and schools commissioning places and services from the free school. Alternative provision (AP) free schools will have been established in response to demand by local authorities and/or local schools. Evidence of this demand is needed to support the establishment of the schools. Local authorities are responsible for ensuring that adequate AP is available for pupils in their area who are not at a mainstream or special school. Authorities often share this responsibility with their mainstream schools, which use AP for short-term placements and preventative work for pupils with behavioural difficulties, as well as longer-term placements for excluded pupils. The AP funding arrangements have to be considered by local schools forums, and it is important for them and all those schools intending to use an AP free school for their pupils to understand how the AP funding works locally and how the costs of a new AP free school will be met in that context.
- 6.72 This is crucial because, from the third year after an AP free school opening, ESFA starts to deduct an appropriate proportion of the place funding from the dedicated schools grant (DSG) of the local authorities who commission (or whose schools commission) places at the AP free school. Some AP free schools accept pupils from local authorities other than the one in whose area they are located, or from schools and academies in other local authority areas. There may be situations, therefore, where for this or other reasons the funding deducted from the DSG of the local authority in which the free school is located does not constitute the total funding for places ESFA will pay to the free school.
- 6.73 Funding in AP free schools comprises:



- funding from ESFA for full-time equivalent places. The flat rate per-place funding will be paid for a number of places, which will be subject to regular review and dependent on local authority and school commissioning and take up of the places. The detailed funding methodology may vary over time as changes are made to the school and high needs funding systems
- per-pupil top-up funding paid by the commissioner (local authority or other school or academy) – top-up funding is agreed between the provider and commissioner and paid to the provider directly by the commissioner for each individual pupil
- any funding received for commissioned services (such as outreach work in local schools)

6.74 AP free schools' continuing financial viability depends on both the ongoing support of local authorities and schools, in terms of a commitment to commission placements and services, and their willingness to provide associated funding. It is therefore important that you are able to show evidence before you open that your commissioning authorities and schools have committed to commissioning places at your school. Schools' commitment to commissioning places at your school should be accompanied by a recognition of the costs of the AP and the value for money the school will offer, an understanding of how those costs will be met by local authorities and schools in the area, and an assessment of the affordability of the provision based on these factors.

6.75 Alternative provision free schools also receive from ESFA national 16-19 formula funding for each 16-19 place, plus an additional £6,000 for each high needs place. Post-16 high needs places are for students with SEN or who are disabled (not necessarily, but often with an EHCP), whose additional support costs more than £6,000. The number of high needs places is normally agreed by the local authority in which the free school is located, in consultation with other local authorities as necessary. For each high-needs pupil aged 16-19 that a local authority places in your school, top-up funding for the additional support costs in excess of £6,000 is payable by that authority. A [guide to AP free school revenue funding](#) is on the gov.uk website.

## **Funding for free school nurseries**

6.76 If your free school includes a nursery, it will be funded on the same basis as other early years provision – not using the same formula as any other free school. This is because the Secretary of State does not enter into a funding agreement in respect of the nursery, as it is instead funded by the local authority and/or parents paying for places. Our expectation is that the school and the nursery should each be financially viable without reliance on cross-subsidy.



- 6.77 All 3 and 4-year olds, and some 2-year olds whose parents receive certain benefits, are entitled to 570 hours of funded early education each year. Since September 2017, 3 and 4-year olds have been eligible for an additional 570 funded hours per year where both parents are employed and earn above the minimum/living wage for 16 hours per week but neither has a taxable income over £100,000. Further information regarding the criteria for funded childcare can be found [here](#). A nursery cannot put conditions on the free hours (for example, only allowing parents to access their free entitlement if they agree to taking additional paid hours or pay for lunches).
- 6.78 Where parents choose to take their free entitlement in a nursery that is part of a free school, the local authority will fund that provision from their dedicated schools grant (DSG) allocation at an hourly rate agreed by the local schools forum. The local authority is only required to fund the children who attend the nursery; they are not required to fund empty places.
- 6.79 In 2017, the department introduced a new early years national funding formula (EYNFF), which includes a minimum hourly funding rate of £4.30 and a requirement for local authorities to pass 93% (95% from 2018-19) of funding directly to providers. The EYNFF also established a Disability Access Fund, which pays £615 per year for each eligible child, to enable them to access the free entitlement, and places a requirement on local authorities to establish a special educational needs inclusion fund, to support children with SEN to achieve good outcomes in the early years. Further information on the EYNFF can be accessed [here](#).
- 6.80 In order to receive funding for the free early years entitlements, the free school nursery must be registered on the Early Years Register, or be a school that is exempt from such registration (see [section 15](#) for further details). When these criteria are met, the local authority must ensure that free childcare is made available at the early years provider (including nurseries) of the parent's choice, provided that the nursery is willing to provide the funded places, accept any terms of payment, and accept any requirements that would be imposed by the local authority (for instance, requirements in respect of SEN, safeguarding and maintaining Ofsted quality standards).
- 6.81 A free school nursery may charge parents for additional hours above the free entitlement and is free to decide its own rate for this additional provision, but you cannot charge for the free hours that are funded by the government. Free school nurseries are allowed to make a profit, but the accounting must be separate from the school's General Annual Grant and the provision must be set up as one of the following:
- direct provision by the free school. Any surplus can be reinvested into the school

- a not-for-profit charitable company. The company can retain any trading surplus as a reserve, or reinvest this into the school
- a for-profit company. The profits can be reinvested into the school once the company has accumulated a prudent reserve

## Other helpful sources of information

6.82 The Academies Financial Handbook sets out the funding arrangements and financial management requirements that your school must follow. You must refer to this handbook alongside your funding agreement for information about the financial systems and controls that your school is required to have in place.

## LINKS TO FURTHER INFORMATION

- [Table 5 funding checklist](#)
- [HMRC website](#)
- [NSN budgeting tool and guidance](#)
- [Academies Financial Handbook](#)
- [Academies Accounts Direction](#)
- [Funding arrangements for free schools](#)
- [Schools financial efficiency: top ten planning checks for governors](#)
- [Schools financial health and efficiency webpage](#)

## 7. Procurement and additional support

### Purchasing goods and services

- 7.1 Academy trusts are classed as public bodies and must comply with public procurement regulations. It is important that you understand the requirements when you are planning any purchase. Essentially, the rules are about using a fair and open procurement process to help ensure that you achieve the best outcomes for your free school and the best value for money.
- 7.2 Schools need to buy a wide range of goods and services and they may use different suppliers, such as public sector buying organisations, procurement consultancies and local authority traded services to help them do so. This diversity can offer opportunities for schools to improve their efficiency, but navigating the system can be complex. Detailed guidance on [buying for schools](#) is available on gov.uk. Our [Schools' Buying Strategy](#) outlines the support available to help schools improve value for money from their non-staff spend. Further guidance on school procurement, which includes example contracts and expression of interest forms, can be viewed [here](#).

### Summary of the key tasks

- 7.3 You will need to make sure that you understand the rules and regulations governing public spending and decide early on how you will make any spending decisions. As a general guide, the higher the value of the purchase and the more public money you are spending, the more regard you should have to the procurement rules.
- 7.4 It is a good idea to set out the trust's approach to procurement within your financial management policy. This means thinking about how you will approve and review your expenditure, and how any financial powers will be delegated, so that it is clear who is responsible for what.
- 7.5 You will need to be clear about how best to use your PDG. You should review your group's capacity and capability to decide what you can deliver for no cost and to estimate the total value of what you need to buy. Remember that value for money is not always about the lowest price, but involves getting the right balance between quality and cost. Think about how you will measure both of these when you specify and evaluate your purchase. You are spending public money and need to be able to show that you are using it well. It is always useful to ask yourself if your procurement decisions can be satisfactorily defended in public. There is more detail on typical areas of project expenditure in [section 6](#).

- 7.6 Having a good range of expertise in your group can help you to decide what you can do for yourselves at no cost and when you will need to buy in support because your capacity and/or capability is likely to be stretched. It will also help you to negotiate and push back on costs to get a better deal.
- 7.7 Good procurement decisions will help you get the right support and achieve value for money. Conversely, if you do not follow a fair and transparent process and apply criteria consistently, you are less likely to identify the best proposals from potential suppliers. Poor procurement decisions risk wasting time and money and slowing down progress. They also risk reputational damage if potential suppliers think you are not being fair, and if people think you are not using public money properly. If you have not followed the requirements of public procurement law you could be open to legal challenges from suppliers. If challenges are successful, this can lead to contracts being cancelled, competitions having to be re-held and financial penalties incurred (compensation).
- 7.8 A step-by-step guide to help you plan and implement the most appropriate process for your school procurement need is available on gov.uk [here](#).

## Procurement regulations

- 7.9 All public sector procurement must comply with the Public Procurement Regulations, which incorporate the requirements of the European Procurement Directive. These regulations are designed to safeguard fair competition principles and are legally binding for anyone with responsibility for spending public funds. More information on EU financial limits is provided below on [open procurement](#). [Further guidance on EU procurement thresholds](#) is also available on gov.uk.
- 7.10 Buying in services and/or goods is not just about processes. You need to ensure that you secure the right services at good value for money and use an approach that is proportionate to the estimated value of the contract you plan to let.
- 7.11 You must manage potential conflicts of interest. When using public money to award contracts, you need to demonstrate the highest standards of propriety. In particular, you need to have considered the scope for conflicts of interest and taken steps to manage them. This means that no members or trustees of the trust should be involved in any decision over awarding a contract if they or any of their relatives, friends or business associates are involved with or employed by any of the companies bidding.
- 7.12 It also means that if a member or trustee of the trust successfully bids for work, there must be arrangements in place to enable the trust to hold that individual or their company to account for the delivery of the contract.

- 7.13 When spending money, you should also check that your plans comply with your articles of association, as these will include specific conditions on who can be employed by the trust or enter into a contract for the supply of goods or services to the trust.
- 7.14 ESFA guidance [Academies Financial Handbook](#) sets out a number of rules governing financial transactions using public money.
- 7.15 NSN has also put together some guidance around following public procurement regulations when spending your PDG. This can be accessed [here](#).
- 7.16 If you decide you need to buy in additional support using your PDG, you have two options:
- open procurement, whereby the trust agrees and issues a specification for the required services and appoints a supplier based on an evaluation of the bids received
  - in-house, whereby the trust has and uses its own employees to deliver specified services on an 'at cost' basis
- 7.17 You can use a combination of these options to buy any or all of the additional support and services you need. More detail on these options is provided below.
- 7.18 Free schools in pre-opening, as academy trusts, are expected to by the principles in the [Academies Financial Handbook](#), which is available on gov.uk.
- 7.19 The Academies Financial Handbook is clear about our expectations around delivery of services to academies and free schools from anyone with a governing relationship to the school. To summarise:
- all those with a governing relationship, including individual members and trustees and bodies related to them, as well as sponsors and sponsor related bodies, are required to bid for and deliver services to their academies and free schools at cost
  - it has always been the case that open, fair and proportionate procurement processes must be followed whenever outsourcing services from the academy trust – including if sourcing such services from the sponsor
  - the definition of 'at cost' has been amended to ensure that at cost delivery is sustainable for the supplier in the long term
- 7.20 It is the responsibility of the academy trust to ensure that these requirements are met, and that audit trails are kept. The Academies Financial Handbook includes a requirement for academy trusts to secure a statement of assurance and open book arrangement with restricted suppliers, but beyond this it is up to the academy trust to decide how best to meet the requirements.

## Open procurement

- 7.21 Under this option, you can invite any third-party supplier to bid for your work by tendering. You will need to specify what it is you want to buy, and what criteria you will use to assess the tenders.
- 7.22 If a member of the applicant group wants to bid for any work, the trust must make sure that it complies with its articles of association and follows the guidance in the Academies Financial Handbook. You will also need to ensure that you have put in place robust arrangements to manage any potential conflicts of interest.
- 7.23 The procurement approach you use should be proportionate to the estimated value of the contract you plan to let. The greater the value, the more you need to demonstrate to all potential bidders that the competition is open and fair. Your trust will need to decide the approach it will take at different contract values.
- 7.24 It is up to the trust to decide its procurement thresholds but typical values might be:
- low value – below £10,000
  - medium – between £10,000 and £40,000
  - high – over £40,000 but below the EU threshold (details of EU threshold levels are available [here](#))
- 7.25 At lower values, the procurement process could be very simple – such as getting two or three telephone quotes to help you check that you are getting a fair market rate. We provide some further [guidance](#) on low-value procurement on our website, which sets out what you need to think about when writing a statement of requirement. This does not need to be a complicated document; a paragraph might be sufficient.
- 7.26 Not every purchase will require a competitive process. For example, if you are advertising in the local press, you may have only one option. In these cases, the expectation is that the trust will negotiate the best deal that it can within the market and keep a record of its spending decisions.
- 7.27 Under the EU Directive, there are set financial limits that apply to all public sector procurement across the European Union. This means that where the value of a specific procurement is likely to go over the thresholds for goods, services or works, the procurement process has to comply with the EU Directive.
- 7.28 The current thresholds (from the 1<sup>st</sup> January 2018) are £181,302 for goods and services, and £4,551,413 for building works. You cannot artificially ‘split’ contracts to avoid these rules. It is unlikely that many purchases during the pre-opening

phase will exceed the EU thresholds. More information and guidance on the process is available [here](#) on gov.uk.

- 7.29 A 'light touch regime', with a higher threshold of £589,148, applies for some services that are specifically for education provision. You should seek legal advice or contact the department to determine whether your procurement qualifies.

## In-house delivery

- 7.30 In-house delivery involves the trust using its own employees to deliver specified services, using PDG to cover the employment costs of the staff involved. This arrangement can include staff brought in through a secondment or a fixed-term contract of employment, as long as they are not appointed as a way of circumventing public procurement rules.
- 7.31 In choosing this option, you need to be sure that your trust has the experience and capacity in place to undertake these tasks and that the services it provides through the in-house route and that the costs quoted offer good value for money.
- 7.32 Where a trust uses its own employees, the salary levels must be set at reasonable levels that are appropriate to the skills, qualifications and experience of the jobholder, and are in line with what similar employees in similar jobs would be paid in the local area. Employees may also receive reasonable actual costs for their incidental travel expenses and (if required) accommodation and essential subsistence where they need to travel to fulfil their duties for the trust. The trust will also have to budget for national insurance, pension, essential training and other directly employee-related costs. Salary levels for employees should normally be significantly lower than the day rates charged by consultants and other contractors. A definition of 'at cost' is included in your PDG letter.
- 7.33 It is up to you as the trust to ensure you comply with existing legislation in respect of employment and have the appropriate employment contracts in place. Where a secondment is put in place, you should ensure that there is agreement on the services that will be delivered. HMRC provides [guidance](#) on its website.

## How we will work with you

- 7.34 Trusts are accountable for their decisions and expenditure.
- 7.35 Your lead contact will monitor the progress of the project and check that expenditure returns are received and appropriate.

## Helpful sources of information

### Support from open free schools

- 7.36 You may find that working with an existing free school is a good way to access some of the skills and expertise you need. Using your PDG to cover the backfill expenses of any school you work with can be an appropriate use of your funding.

### Support from other organisations

- 7.37 There are a number of other organisations that provide paid or unpaid support to free schools. For example, the Government Procurement Service (GPS) offers a range of support on procurement to help free schools during pre-opening and post-opening stages. You can find information on some of these organisations and how to contact them on the following page: [Free Schools: Information and Resources](#). You can also find a range of organisations that provide services and support to open free schools on the '[Offers for free schools](#)' section of NSN's website.
- 7.38 Please note that neither the department nor NSN endorse any particular provider of services.

## LINKS TO FURTHER INFORMATION

- [Schools Buying Strategy](#)
- [Deals for schools](#)
- [View Table 2. Procurement and additional support: checklist of activities](#)
- [Academies Financial Handbook](#)
- [Schools Buying Strategy](#)
- [Low to medium value quotes - schools](#)
- [HMRC guidance on employing staff](#)
- [NSN 'Offers for free schools'](#)
- [Information and resources available to free schools](#)
- [Procurement training modules for schools](#)



## 8. Site and buildings

### Introduction

- 8.1 This chapter explains how ESFA will work with you to find and secure a suitable site for your school. It also includes information on what happens during the build or refurbishment of the site and what to expect prior to the formal handover.

### Key messages

- Finding the right site for your free school is very important. It can also be the most time-consuming, complex and frustrating aspect of your project. However, it is important not to get distracted by the site at the expense of the key tasks during pre-opening. Clarity of roles within your proposer group is crucial in relation to this. It is recommended that there is a person who leads on the site and works with ESFA to prevent people from worrying about the site unnecessarily.
- The earlier a site is secured – that being, site acquired, relevant planning permission obtained and building works agreed – the better. Having a secured site can be very useful when marketing your school to prospective parents, pupils and staff.
- The length of time to secure a permanent site will vary for each free school project. Key factors for finding a site are your school's operational requirements and the location. Some areas have better site availability than others do. It is difficult to find suitable sites in some areas of the country and, for this reason, you may need to be flexible about where the school is located (as well as about the year of opening). The average time taken to secure a suitable site is around a year, while the normal lead time for acquiring and delivering sites ready for a school to open is around three years. Therefore, unless a site is already secured and requires little work and no planning approval, opening in a shorter period will be extremely challenging. Whilst it is important to secure a site that is appropriate for the school, we must also achieve value for money for the public purse.
- You should not announce the site that has been chosen for your school has your Project Director has confirmed the site has been secured and that it is appropriate to do so. This is because commercial negotiations are highly sensitive and can be undermined by premature public announcements about acquisitions.

## **ESFA team**

### **Project Director**

- 8.2 The ESFA Project Director and Project Manager will work closely with you and the lead contact throughout the project. Project Directors will provide a strategic overview and will ensure that the Project Managers and Technical Advisers who report to them are delivering their individual projects and adhering to internal ESFA processes.
- 8.3 The Project Director's level of involvement will vary according to the risk and complexity of your project. Where there are significant site issues and concerns (and/or where there are few educational, governance or finance concerns), they may intervene and engage directly with the proposer group.

### **Project Manager**

- 8.4 The Project Manager will be your primary point of contact at ESFA. Your Project Manager will coordinate the rest of the project team to ensure all site related activities are delivered. They will work with and co-ordinate activity between the Property Team, ICT and Central Technical Advisers, and Legal Managers, and will report progress to the proposer group.

### **Regional Technical Adviser**

- 8.5 The Regional Technical Adviser will work with ESFA or LocatED (a wholly owned Property Agency function of the Department for Education) to assist with site selection and set the capital works budget for the preferred site. The Regional Technical Adviser will define works type, building and site areas, and develop capital budgets. They will select the project procurement route and provide strategic procurement advice at project and programme level. The Regional Technical Adviser also has oversight of external appointments with programme oversight. They provide advice and supports a number of Project Directors working within a specific region. Any changes to the budget, scope or procurement route have to be agreed by the Regional Technical Advisor.

### **External Technical Adviser**

- 8.6 The External Technical Adviser will manage the procurement process from the start through to completion. Their key role is to collate and agree all necessary technical information pre-contract and once on site they will administer the contract. They will manage the specialist staff required to provide expert services on your project, such as architects, quantity surveyors, and Construction Design and Management coordinator.

## Acquisition Manager

- 8.7 An ESFA Property Manager or LocatED Acquisition Manager will be responsible for securing site(s) for each free school. Normally an ESFA Property Manager will be assigned where a site is to be acquired from a local authority through a peppercorn lease (where the department leases sites at effectively zero rental cost, typically over a long period) or a Section 106 site (which is provided by a developer as condition of planning permission). LocatED will be commissioned to secure sites for most other projects where commercial acquisitions are required. One of their Acquisition Managers will work with the Project Director and Project Manager to secure a site. The ESFA Property Manager or LocatED Acquisition Manager will be responsible for completing site searches, negotiating with vendors and agreeing terms. The Project Director in ESFA will be your main contact for site search updates and will be primarily responsible for liaison with the Property Team or LocatED in relation to your project.

## Regional Planning Leads

- 8.8 The ESFA Regional Planning Lead will provide advice on strategic and/or site specific planning issues, including new build schemes, changes of use and section 106 agreements. They are engaged to advise on the most appropriate planning strategy from site selection and acquisition (working in parallel with ESFA and LocatED colleagues), through to when permission has been granted and related conditions and obligations have been met. At each stage, they engage with framework consultants and/or contractor teams to ensure that the necessary planning permission is in place for the school site at the time it is required.

## ICT Adviser

- 8.9 The ICT Adviser (IA) will discuss Information Communication Technology (ICT) requirements with you. The IA is responsible for setting an appropriate ICT budget and for signing off ICT capital claims. They will ensure that the proposed building will comply with all relevant requirements included in the Output Specification (the baseline design for new school buildings and facilities as developed by the ESFA, which may also be referred to as Generic Design Brief). The IA will provide support to the group in order to develop requirements of any solution, and will assess proposals for technical, practical and pedagogical suitability. They will also work as a liaison between the proposer and any contractors. Prior to formal handover of the project, the IA will witness the testing of any provided solution with the proposer. They will also provide support to you on procurement options available for capital spend on ICT equipment and services.

## Finding a site

8.10 Free schools can be located in a wide variety of premises. They may not look like ‘traditional’ school buildings, and will often not require the construction of a completely new building. Free Schools have historically been delivered in refurbished or remodelled accommodation, as well as new build facilities. There is a current presumption in favour of modular construction in order to speed programme delivery and secure better value for money.

8.11 After the approval of your proposal, ESFA will join your project kick-off meeting with your lead contact to discuss the suitability of the proposed premises and to consider any alternative site solutions. Before this meeting, ESFA will have reviewed the suitability and availability of any sites you have proposed in your application, and identified the necessary next steps. Depending on the outcome of our review, we may also have:

- commissioned LocatED, to undertake a site search, and considered alternative sites where relevant
- contacted the relevant local authority about planning designation
- considered the availability of government buildings

8.12 We realise you may already have a preference for a particular site. Please be aware, however, that it may not be the most feasible one. Common reasons why we often find that to be the case includes the following:

- it is too small or too big for the number of pupils
- it is not actually on the market, or available in the time needed
- it is too expensive to buy, lease or maintain
- it requires too much work to be affordable
- it does not have – and we may not be able to get – the appropriate planning consent for a school
- it is a listed structure. Securing planning for change of use and works is expensive, complicated and time consuming, which may increase the risk of delays. The ongoing maintenance of a listed structure and restrictions of use is likely to be expensive and restrictive for the free school trust

8.13 We would encourage you to keep an open mind regarding sites. Just because a site doesn’t look like a school, it doesn’t mean it cannot become one.

## ESFA and LocatED responsibilities in finding a site

- 8.14 During the site search stage of the project, ESFA will commission LocatED where appropriate to do the following:
- conduct site searches and provide you with a suitable site
  - ESFA or LocatED's Technical Advisers to visit and assess the preferred site, provide a high level view of the nature and cost of any construction works needed, planning consents required and likely running costs
  - if that assessment shows the site is affordable and good value for money, ESFA or LocatED will start negotiations to acquire the site
- 8.15 If a market site is to be acquired, it will be LocatED's decision to secure sites based on a commission from ESFA following close engagement with the trust on their requirements. Trusts will be given an opportunity at the start of the process to input into the commissioning instruction. It is important that you take this opportunity to feed in your views, as the commissioning instruction will form the basis for decisions on securing a site. LocatED will be required to obtain confirmation from the Project Director that the original commissioning instruction has been met prior to LocatED finalising their decision to acquire a site and the Project Director will keep the trust involved throughout and inform you of the site selected.

## How the trust can help

- 8.16 If you have any information or local knowledge that you would like ESFA Property Managers or LocatED to be aware of as part of the site search, you should feed this in through your Project Director. We welcome any information that trusts may have – but you must not enter into negotiations on sites, as doing so would undermine the negotiating position of the experts who are commissioned to do that. More importantly, this is public money and any funds committed to a project must be done with ministerial approval.
- 8.17 You must not announce the site that has been chosen for your school until your Project Director has confirmed that it has been secured and that it is appropriate to do so. This is because commercial negotiations are highly sensitive and there is a risk that they will be undermined by premature public announcements about acquisitions.
- 8.18 You will also need to take heed of our advice about local developments and how they affect your site options.

- 8.19 In collaboration with NSN, ESFA have developed a number of resources that provide an overview of the people and processes involved in securing a site. These can be accessed [here](#).
- 8.20 You should work with your Project Director throughout the process, to ensure that the site is suited to the needs of your proposed school. However, you may need to be flexible, as it is not always possible to deliver a site and buildings that match your preferred specification exactly, due to constraints such as cost, size and time.

## Securing a site

- 8.21 Securing a site can be complex and time-consuming. However, once we have found a suitable site for your school that can be delivered in the timescales available and that represents value for money, ESFA Property Team or LocatED will begin negotiations to acquire it. The six main ways of doing that are:
- peppercorn rent lease (by ESFA Property and Legal Teams)
  - S106 site (by ESFA Property and Legal Teams)
  - peppercorn lease (Multi Academy held lands – ESFA Property and Legal Teams)
  - peppercorn lease pursuant to Development (ESFA)
  - freehold purchase (by LocatED on behalf of ESFA)
  - commercial lease (by LocatED on behalf of ESFA)
- 8.22 The following link provides more information on the [options to acquire a site](#).
- 8.23 As with buying a new home, there will be sensitive negotiations around acquiring a site for your school. Site owners want to secure the best possible deal for themselves while it is our duty to secure best value for you and the taxpayer.
- 8.24 It is vital that you check with your ESFA Project Manager before discussing or revealing details of the site you are seeking with anyone outside your group. These negotiations are very commercially sensitive and public disclosure can seriously undermine our negotiating position and may result in the transaction being aborted.
- 8.25 Subsequent planning applications can also be affected if information about sites is released at the wrong time. Securing [planning approval](#) is of course crucial to delivering your school buildings.
- 8.26 We will tell you when you can publicly confirm your sites (permanent, temporary or both) – see [paragraph](#) below on statutory consultation.

## ESFA responsibilities on securing a site

- 8.27 It is the responsibility of the ESFA Property Manager or LocatED to commence negotiations with the site owner or the agent representing them, and seek to agree Heads of Terms for the purchase or lease of the site.
- 8.28 The ESFA property manager/LocatED/the ESFA Project Team will, at the same time, estimate the total costs for the site and seek approval from its investment committee and, where required, ministers, to complete the acquisition.
- 8.29 Lawyers will carry out checks on the tenure, ownership and any restrictions affecting use of the property and complete the transaction. The time this takes will vary from property to property, depending on planning and other issues affecting the property.

## Interim site solutions

- 8.30 In some cases, free schools have opened on a temporary site before being relocated to their permanent buildings, but this should only happen in exceptional circumstances (for instance, because the school is necessary to meet pressing demographic need). When securing the permanent site, we will establish with you whether opening in temporary accommodation is appropriate. We will evaluate the risks of this by examining the delivery of the project's permanent site, evaluating the viability of any proposed temporary solution, testing whether there is clear evidence of need for places in the area and ensuring that value for money is provided when compared to other schools of a similar phase/location. Temporary solutions can come in many forms depending on what is needed and what is available, but the most common are:
- using a building on the permanent site while other buildings are in construction
  - community buildings such as a church hall or community centre
  - part of a neighbouring school
  - portacabins on the permanent site
  - a local office building
- 8.31 To ensure value for money for the entire project, we do not want to spend any more money than necessary on temporary accommodation, so will try to provide an interim solution that requires minimal alteration.
- 8.32 The procurement and costs associated with temporary site works (such as the rental of temporary classrooms) will be managed by ESFA, with the Secretary of State entering into required contracts.

## Difficulties in securing sites

- 8.33 If a project has spent considerable time in pre-opening without a site being secured, therefore potentially wasting resources, and we do not feel it is making sufficient progress despite numerous interventions, we may contact you to inform you that we are considering cancelling the project. During this process, we will explain why we are minded to make a particular decision, taking into account the representations of those affected and allow trusts to respond to this before a final decision is made by the Minister to cancel the project.

## The site and your statutory consultation

- 8.34 Section 10 of the Academies Act requires proposers of free schools to consult formally with those they think appropriate. This [statutory consultation](#) must be completed before the funding agreement can be signed.
- 8.35 Ideally, you should do this once we have secured your permanent site, but in practice that may not always be possible.
- 8.36 If it is not, you could identify a particular catchment area for the free school, such as a postcode, or a particular area of a city or town. At the same time, you do not want to undermine any site negotiations, so we will agree with you what information you should provide.

## The site and your funding agreement

- 8.37 Other than in exceptional circumstances, the department will not enter into a funding agreement until Heads of Terms have been agreed for the permanent site and any temporary site, if relevant. We will need to be confident that there is a strong prospect of securing a permanent site and approving the full capital budget for your project.
- 8.38 As part of the funding agreement, there will be a set of land clauses. These aim to protect our public investment in acquiring and developing the land, and to ensure you (the trust) continue to meet your legal obligations as set out in the funding agreement.
- 8.39 Please note that:
- the land clauses in the funding agreement must reflect the relevant model drafted by the department
  - your lead contact will confirm the land clauses and on any bespoke legal arrangements that may apply



## ESFA responsibilities on capital funding

- 8.40 ESFA will set the budget for each scheme and submit it for ministerial approval. In most cases, this will be done after Heads of Terms on the permanent site are agreed. The budget for each project will not be shared with the trust until it has been agreed by ministers or officials. At this point ESFA will confirm that it has permission to proceed with the construction works and will notify the trust that funding has been approved for trust-procured elements (such as ICT).

## Procuring works and services

- 8.41 The procurement route is determined by the size, nature of the works, time available and value of the contract. We begin work based on your approved pupil numbers and associated basic area requirements of your school.
- 8.42 All building contract appointments must comply with [public procurement procedures for free schools](#). The most common procurement routes, using design and built construction contracts, are:
- ESFA Contractors' Framework
  - ESFA Modular Construction Framework
  - Appropriate Regional Frameworks
  - Local procurements for small-scale works
- 8.43 The ESFA team will lead on the procurement and the Secretary of State will sign the construction contracts once we are ready to progress with the building works.

## Building works

- 8.44 In procuring the building works we will:
- commission technical advisors (for example, architects, quantity surveyors)
  - commission surveys of the site
  - appoint legal advisors for the building works contract
  - develop the design proposals, oversee and negotiate contracts for works
  - manage the building works contract on site
  - manage the handover to the free school
  - manage any defects through to the end of defects period, 12 months after completion

8.45 Your input at all stages of the procurement is encouraged and the ESFA team will keep you updated on the progress of the procurement, agreeing relevant aspects for the works as the designs become finalised. Before signing the construction contract, the design of the school will be agreed with the trust, finalised and signed-off. Once a contract is signed, post-contract variations will not be permitted so Project Directors will ensure that you understand design constraints and are happy with the approach agreed.

8.46 Before opening the school, you will need to:

- agree to the date proposed for Ofsted's pre-registration inspection visit to the site
- keep staff, parents and local communities updated on progress
- develop contingency plans just in case building works overrun
- prepare for and attend the readiness to open meeting with the department
- work with us to ensure the works are completed to the contract specification and formally handed over

## Ofsted pre-opening site inspection

8.47 There are a number of formalities that need to be completed before the school can open. These include an Ofsted pre-opening site inspection, planning how to operate the school and the formal handover of the site.

8.48 In order for your school to become registered with the department and officially open, the site needs be inspected by Ofsted. This is explored in detail in [Section 15](#). The purpose of the site visit is to ensure the building is safe and complies with the Independent School Standards Regulations on premises.

8.49 In the majority of cases, the site will not be ready when Ofsted visit, as building works will still be ongoing. Inspectors will be aware of this, but will still want a tour of the site, so that when they look at the plans and drawings they have a better understanding of how the school will fit and operate on the site. The ESFA team will support you on this.

## Planning how to operate the school

8.50 Construction works may continue up to the school's opening day or beyond. We will work with the contractor to tell you and your principal designate as soon as we can when you will have access to the site. This allows you to set a date for opening to inform parents and then plan for preparing, opening and operating the school. You should also develop contingency plans in case building works are delayed or there are other complications.

8.51 In exceptional circumstances, the phased completion of a school building may be considered. However, this is not an option that would be appropriate for many projects, because it would typically offer poor value for money and make it difficult for your school to operate effectively (for example, teachers would face additional difficulties delivering lessons next to a building site).

## Planning issues

8.52 The key reasons why new schools may need to seek planning permission are:

- change of site use or classification (of an existing building)
- new-build, extension and other external works
- Listed Building consent

8.53 The ESFA is responsible for ensuring that the necessary planning permission is in place. Your ESFA contact will liaise with in-house colleagues and external consultants and contractors, and keep you informed of progress.

8.54 Planning permission will be sought as early as possible, to avoid any delays to the project. We will work with Local Planning Authorities and seek to resolve issues and find proactive solutions to planning related matters as they arise.

8.55 The [National Planning Policy Framework](#) advises that local authority decision makers should not place unnecessary burdens on school development. This effectively amounts to a presumption in favour of the development of new schools, but does not guarantee a successful outcome. If all options at a local level have been exhausted, we can resort to a planning appeal to the Planning Inspectorate under the Ministry of Housing, Communities and Local Government.

8.56 In addition to the presumption in favour of new school development, there is legislation that allows for Permitted Development Rights for schools. These can be powerful tools in seeking to open a school on time. Your ESFA contact will be able to advise you if these Rights may be of benefit to your project. The details are set out briefly below:

- a two-year temporary Permitted Development Right to operate a school for the first two academic years without needing planning permission for change of use, regardless of the previous use the building (with one or two exceptions)
- a right for 'permanent' change of use that allows buildings from other use classes to be converted into schools, without the need for a full planning application. These use classes are offices (B1), hotels (C1), residential institutions (C2), secure residential institutions (C2A) and assembly and leisure (D2). These cases

are subject to a lighter-touch 'prior approvals' process where the breadth of factors on which the LPA can determine the application is constrained

- some minor operational development, including small-scale additions to existing schools, boundary treatment and associated external works

## Formal hand-over of the site

- 8.57 When building works on the site have been completed, the building contractor will hand over responsibility for the site to the school by a formal process. This will include the building contractor taking your business or premises manager, or principal, on a complete tour of the building, highlighting where all mechanical and electrical services are located and how they operate, and handing over all warranties and certificates, such as fire certificates. A 'snagging' list will be drawn-up with the contact, to highlight where there are still minor defects or where the refurbishment has not met the required specification. The contractor will be required to rectify these following formal handover. Your ESFA Project Director will provide further information on the formal handover process.
- 8.58 At handover, you will be given a building health and safety manual from the Technical Adviser and building contractor. This will contain important information regarding building systems on their operation and maintenance. This will provide you with building information, commissioning and test certificates, and operation and maintenance manuals. It is important that these documents are kept safe and are available for reference by building or maintenance professionals.
- 8.59 Once handed over it will be your responsibility in most situations to arrange for maintenance of plant, equipment and the site generally. Failure to maintain the equipment regularly in accordance with the installation instructions can lead to warranties being invalid. Ask for early information on equipment and maintenance schedules so you can tender for the maintenance contract and have it in place at handover. You should prepare for this information to be provided to you at or after completion, as is the case with most contractors. In relation to the site, your obligations will be set out in your lease or licence and/or your funding agreement.

## Checklist of activities

- 8.60 The activities in the [site and buildings checklist](#) provide an overview of key activities, but each project is different and will have its own timetable. The timing of activities for your project will also depend on when the site is secured.

## LINKS TO FURTHER INFORMATION

- [Table 6 Site and buildings: checklist of activities](#)

- [HMRC website](#)
- [NSN and ESFA site resources](#)
- [NSN budgeting tool](#)
- [Academies Financial Handbook](#)
- [Funding arrangements for free schools](#)
- [Free school model funding agreement](#)
- [Public procurement procedures for free schools](#)
- [Independent School Standards Regulations on Premises](#)

## 9. Pupil recruitment and marketing

### Key messages

- Ensure you have a relentless focus on recruitment and have an effective marketing and recruitment strategy in place.
- Focus on frequent face-to-face contact with parents, children and/or young people. Your group should keep the effectiveness of your plans under constant review by considering the numbers of applications received.
- You must market your school so that it is likely that you will attract a diverse range of pupils to your school, including those from disadvantaged backgrounds.

### Risks

- 9.1 Attracting sufficient pupils to ensure your school is viable is essential. Evidence of high levels of demand for your schools does not automatically equate to large numbers of applications or referrals. Similarly, do not assume that when you offer places that all those offers will be accepted.

### Recruitment and marketing

- 9.2 Successful pupil recruitment is an essential element of the pre-opening period. We know there will be many calls on your time, and many other pressing matters, but attracting sufficient pupils to ensure your school is viable is essential. Financial viability, educational planning, and staff recruitment all depend on pupil numbers.
- 9.3 You should not assume that high levels of demand for your school when canvassing for support will automatically equate to large numbers of applications or referrals. Similarly, do not assume that the offers you make will all be accepted. It is essential that you have an unrelenting focus on pupil recruitment.
- 9.4 You may have had very high levels of interest in your free school, but you need to convert this into applications or referrals. During the pre-opening period, your marketing activity should increase and build on the publicity and interest you have already achieved, to show those who have already expressed an interest that the school is moving to the next stage. It will help give them confidence in the school and encourage them to make an application or referral. It will also give you the chance of attracting new parents who may not have paid much attention so far but who would be interested now the school is becoming a reality.

9.5 **For mainstream and 16-19 projects**, you may find it useful to analyse the types of responses you have had to date and assess where and how best to concentrate your efforts, for these reasons:

- some applicants will have made a firm commitment, and you need to keep them engaged, even after you have offered them a place, to ensure they accept
- some potential applicants will have expressed interest without committing to applying, and you need to convert that interest into applications
- some people will not have been particularly interested, but as you move into pre-opening, you can confidently begin to engage them as much as possible

9.6 An adjustment of -30% must be applied to financial plans to take account of historical drop between applications and accepted offers.

9.7 **For faith designated free school projects, projects registered with a religious ethos or projects with a distinctive educational philosophy or world view**, it is important that your proposed school is likely to attract applications from all parts of the local community, not just those of your faith group. Therefore, you must market the school to a diverse cross-section of the local community, building on the engagement that you demonstrated during the application phase.

9.8 **For alternative provision projects**, having entered the pre-opening phase, your marketing activity should increase, building on the publicity you will have achieved by being approved. This will show commissioners who have already expressed an interest that the school is moving to the next stage. It will also give you the chance of securing new commissioners who may not have paid much attention so far but who would be interested now the school is becoming a reality

9.9 You may find it useful to analyse the types of responses you have had to date and assess where and how best to concentrate your efforts:

- because some commissioners will have made a firm commitment, and you need to keep them engaged
- because some commissioners will have expressed interest without providing written commitments for places, and you need to convert that interest into actual referrals
- because some commissioners will not have been particularly interested, but as you move into pre-opening, you should build a relationship with them, to engage them as much as possible

9.10 For **special free school projects**, it is important to engage with commissioning local authorities to ensure that their need for special provision places matches what the school will offer. Parental preference plays a part, however, and while local authorities will name your school on Education Health and Care Plans, it is

helpful that you have the buy-in and support of parents and prospective students themselves. Without the support of families, they are unlikely to ask for your school to be named on a statement/EHCP. This is especially important, as generally you cannot admit pupils to a special school unless they have an EHCP.

## Recruiting sufficient students

- 9.11 In order to provide a broad and balanced curriculum, there is a presumption that primary provision should have a minimum of two forms of entry of 30 pupils, and secondary provision a minimum of four forms of entry of 30 pupils. We do not expect your published admission number (PAN) to be set below this number. If you expect this to be the case, then please contact your lead contact to discuss the rationale.

You should regularly update you lead contact on the number of applications you have received. You must escalate to your lead contact if the number of applications received by the deadline date, or the accepted offer numbers by national offer day, fall short of the above minimum viable expectations. You should continue with your marketing efforts throughout this period, as historically there is a drop of around 30% from the number of applications received to the number of students who will accept places.

- 9.12 For **16-19 institutions**, securing financial viability can be particularly challenging. Please refer to [Section 6](#) of this guidance for further information.

## Marketing – what works?

- 9.13 There are some general principles and lessons learned by previous proposer groups that should help you get the most out of your planned activity. The key is to maintain momentum, so make sure, for example, that newsletters are issued regularly, emails are answered quickly, online information is up-to-date, and that you publicise key milestones, such as the appointment of a principal designate or securing your site. Please also consider the following tips:

- understand your audience. When preparing your application, you will have looked at local context, such as where there is a need for places and how existing local schools are performing. You should use this information now to target your efforts
- understand the particular forms of disadvantage that affect the local community in which your school will be based. You should use this information to attract applications from disadvantaged groups – for example, by running taster days for pupils from local primary schools that have a high level of disadvantage in their intake. By effectively targeting disadvantaged groups, you will contribute towards



closing the attainment gap for disadvantaged pupils, by enabling them to benefit from the high quality education that your new free school will provide

- for post-16 institutions, you will be aware of the number of young people locally who are not in education, employment or training (NEET) and the skills gap identified by employers. You can use this information now to target your efforts. For example, you can work with the local careers office to target NEETs
- engage with the local authority in which your school will be based, so that the provision that your school will offer for pupils with SEND can be included in the local authority's local offer. This is particularly important for special schools, but also applies to mainstream schools
- it is a good idea to have a dedicated spokesperson, so you have a consistent profile, especially as far as local media are concerned, so they always know whom to contact
- local radio is a very powerful tool. You can book paid advertising space (though you will need to book slots well in advance), but you can also get free publicity by suggesting creative ideas for programme content, such as offering a spokesperson for an on-air debate or phone-in programme
- when dealing with the media, try to get a named contact. Find out who is the education correspondent for your local newspaper, or the relevant programme producer for local radio stations, and give them a call. Make sure they know who will be sending them information, and who in your group they can contact if they need to
- engage with local feeder schools, if applicable. Offer to speak at assemblies or have a presence at school events such as parents' evenings and transition days
- if you are a faith school, make sure you make contact with and have the support of your religious body and, if relevant, broader local religious organisations
- produce regular newsletters. You can distribute printed copies locally, or via email to your contact list. You can use an online email marketing company to send out mailshots, often at little or no cost
- if you do not have a permanent site, you will not have a landline. Rather than use a mobile number as a contact point, which can create a sense of impermanence, there are programmes you can use to 'convert' your mobile number to a land line number – which you can then continue to use once the school is open
- translate your leaflets and newsletters into languages which reflect the make-up of your local community

## Online

- 9.14 It is essential that you have comprehensive information available on your website, and that the website is updated regularly. It will help to have a dedicated member of the trust to maintain the site. It is best to set up an email account using the school's name, rather than an individual's, to project a more professional image. Make sure that all enquiries are followed up quickly, and ask correspondents if they are happy to add their email addresses to your contact list for information and updates.
- 9.15 Consider setting up an online forum for parents, young-people and, in the case of special or alternative provision schools, potential commissioners, to make it easy for them to raise any questions or concerns. Many areas now have local online community forums, so start a discussion thread with some information about your school. Again, it is important to respond quickly and follow up queries. In addition, think about setting up a blog with regular updates on your progress.
- 9.16 You can also maintain your profile locally and nationally, especially with the media, by creating and managing social media platforms. For example, a Twitter account for the school will allow you to communicate links to important announcements on your website, and issue timely reminders about meetings or key deadlines. If you want to engage young people directly (for example, if your school is a post-16 free school), experience shows that the most effective online medium is Facebook.

## Face-to-face

- 9.17 Previous proposer groups tell us that face-to-face contact with parents and prospective commissioners has proved especially effective, and can build on any written/online information you have produced. It can be as simple as knocking on doors and canvassing opinion and support. Be prepared to put in time and effort to engage with the community as a whole and make your group known to people.
- 9.18 Events provide an effective platform to display your free school, and can provide an opportunity for parents and pupils to meet the principal designate and teaching staff. Make sure you have application forms available at these events – take parents' details and follow-up with an email or leaflets.
- 9.19 Previous groups have also found that holding events with a theme can attract more people and give them a fuller flavour of what your school would be like. Mock lessons and enrichment days that demonstrate the school's pedagogy (for example, creative writing sessions, fun science experiments, dancing and singing, or creating a performance) have been popular.

- 9.20 After the announcement of GCSE results, and even AS Level results (as some students switch schools/colleges after Y12), it's useful to have a stall in a public place to recruit students and to publicise this in advance.

## LINKS TO FURTHER INFORMATION

- [NSN marketing and communications guidance](#)

## 10. Admissions

### Introduction

- 10.1 This chapter will provide you with tools to help ensure you have a clear, fair and compliant admission or referral process. It will set out the admissions processes for the different types of free schools.
- 10.2 You have set out the vision for your school, which may be to improve standards in a particular area and/or address a deficit of places – and your admission arrangements can help you make that a reality. For example, you may intend to prioritise places for children from disadvantaged families, and you can achieve this by giving priority in your arrangements to children eligible for the pupil premium.

### Key messages

- You must have admission/referral policies that comply with the School Admissions Code or the relevant guidance (depending on the type of school).
- Proposers **must** use the [relevant admission template](#) in drafting their policies.
- You must not arrange for your school to be included in the local authority co-ordinated admissions process without seeking prior agreement from your department lead contact.
- We will offer you advice on developing your school's first set of admission arrangements (mainstream or 16-19 free schools), or your referral policy (alternative provision or special free schools), but it is the trust which is responsible for getting these arrangements right. You will need to understand the requirement to have clear and fair admission or referral policies.

### Risks

- 10.3 Your admission/referral arrangements must be robust enough to withstand challenge. Unlawful admission arrangements can result in significant resource issues:
- complex or overly prescriptive admission arrangements could put off potential applicants
  - in previous rounds, a significant number of admission policies and application forms submitted to the department failed to comply with the School Admissions Code. For this reason, schools must now use the [admissions templates](#)

## Essential information you must provide

- 10.4 During the pre-opening phase, you must provide us with a copy of your proposed admission policy/referral policy/statement of provision, including any catchment area maps and application forms.

## Mainstream free school admissions

- 10.5 Because your school will be an academy, the trust for your school is the admission authority. This means it is responsible for:
- making sure your school's admission arrangements comply with the [School Admissions Code](#) and the [School Admission Appeals Code](#), including the Code requirement that the arrangements should be fair, clear and objective
  - consulting on the proposed admission arrangements, before you open, as part of the consultation you will carry out under Section 10 of the Academies Act 2010
  - complying with the mandatory requirement to admit all pupils with an Educational Health and Care Plan (EHCP) naming the free school and to have regard to the SEN Code of Practice
  - determining (or finalising) the school's admission policy, once you have your funding agreement in place
  - consulting on and determining future admission arrangements after the school opens, in accordance with paragraphs 1.42-1.49 of the School Admissions Code
  - managing applications to the school – you will be responsible for this in the first year (either by managing the process directly, or agreeing that the local authority will do it) and the local authority will do this as part of its co-ordinated process in subsequent years
  - organising an independent admission appeals panel (or contracting this out) in compliance with the School Admission Appeals Code
- 10.6 Every mainstream free school must operate within the local Fair Access Protocol. This is established by the local authority to ensure that, outside the normal admissions round, unplaced children, especially the most vulnerable, are offered a place at a suitable school as quickly as possible.

## Nursery admissions

- 10.7 The School Admissions Code does not apply to nurseries, including those that are part of a school. As such, there is no requirement on them to adopt objective admissions criteria.

- 10.8 It is possible for schools to prioritise children who attend a nursery that is part of the school, or established and run by the school, in their criteria for admission to reception. However, you must ensure that giving priority is fair to local parents who choose not to send their child to nursery, taking into account the location of the school, the availability of reception places in the area and the number of places offered without any reference to whether the child has attended the nursery. In most cases, such arrangements are likely to be unfair – and vulnerable to objection – if few or no places are available to other children once those attending the nursery have been admitted to reception. In such circumstances, it is strongly recommended that your nursery admission policy is the same or similar to your policy for admission to reception, to minimise the risk of objection. You must discuss this with your lead contact, to ensure that your policy for admission to reception is compliant with the School Admissions Code.
- 10.9 Fee-paying nurseries cannot be named as a feeder institution to your free school. However, it is possible to give priority to those paying fees for their child's nursery provision only where any fee is for additional provision above the 'free' 15 or 30 hour funded early education offer.

## **The admissions process (including co-ordination)**

- 10.10 In your first year of opening, our normal expectation is that you either (a) operate your own admissions process, or (b) arrange for the local authority to process admissions on your behalf. Either way, this should be done outside the local authority's co-ordinated admissions process. You must not arrange for your school to be included in the local authority co-ordinated admissions process without seeking prior agreement from your lead contact.
- 10.11 After your first year of opening, your admissions must be handled through the local authority's co-ordinated admissions arrangements, like all other schools in the area. However, while your project is at the pre-opening phase, local authorities cannot offer places at your school under the co-ordinated admissions process until the Secretary of State has entered into a funding agreement with the trust. This is because, in law, a local authority can only make a firm offer for a place at an open school.
- 10.12 We will not advise the Secretary of State to enter into a funding agreement for your school until we are confident that it will open successfully on its proposed date.
- 10.13 It is important to make sure parents applying for your school are not left without a place – or with a place at a school they would not have chosen – if for any reason the school's opening is delayed. Parents should make an application for other

schools as well as yours, by submitting the Common Application Form (CAF) to their home local authority.

- 10.14 Unless you choose option 2A (below), you will need to produce an application form and set out the application process in the admission policy, including the closing date for applications, the (conditional) offer date, and where to submit the application.

### **Option 1: The school to handle the application process in-house**

- 10.15 Parents make a stand-alone application for a place directly to the free school. The school will provide an application form, set the application deadline and offer day, and manage the process of considering applications and making offers itself.
- 10.16 You should encourage parents who apply to your school to submit a CAF to the local authority to apply for other schools as well, in case the free school doesn't open in time. If your funding agreement is not signed by national offer day, you can make conditional offers, while parents can accept the place allocated by the local authority at an existing school as an insurance place. If your school's funding agreement has been signed by the national offer day, you will be able to make firm offers.
- 10.17 Even if you manage the application process yourself, the local authority must still publish the school's admissions policy in its composite prospectus and online.

### **Option 2: The school's local authority to handle the application process for the school**

- 10.18 There are two ways the local authority could manage the process for your school. Local authorities are under no duty to process admissions for proposed free schools before they have a funding agreement in place, so if you want to do this you will need to secure agreement from your home and neighbouring authorities.

### **Option 2A**

- 10.19 The local authority handles the admission process as if the school were in co-ordination, but if the funding agreement is not signed by national offer day, the local authority would make a conditional offer for the free school alongside a firm offer for another open school.
- 10.20 Parents would submit the CAF to their home local authority, naming the free school as one of their preferences, and normal deadlines would apply (31 October for secondary schools and 15 January for primary schools). Parents would be encouraged to name other preferences as well, in case the free school doesn't open in time.

10.21 This option is unlikely to be open to free schools where their final admission policies are not in place in time for them to be fully included in this process. It is not possible for proposed schools in any of the local authorities included in pan-London co-ordination (the process whereby the 33 London boroughs, the City of London Authority, Kent, Essex, Hertfordshire and Thurrock local authorities co-operate in a computerised allocation system), because the process adopted by these local authorities does not permit a conditional offer to be made alongside a firm offer for another school.

## Option 2B

10.22 The local authority handles applications for the school outside co-ordination.

10.23 Parents would fill in the school's application form and submit this to the local authority along with a CAF expressing a preference for other schools, in case the free school doesn't open in time. You would need to decide whether to use the national deadlines and offer days, or specify different dates.

## Composite prospectus

10.24 Local authorities have a statutory duty to provide information about school choices in their local area, and must publish a composite prospectus each year by 12 September. When a free school project is approved by the Secretary of State to enter the pre-opening phase, the department writes to the relevant local authority to let them know in which year the school is expected to open. From that point on, the local authority should take steps to ensure information about the free school is included in its prospectus and must include your school's admissions policy once it is finalised.

10.25 The local authority is required to keep the composite prospectus under review as admission policies change (for example as a result of adjudicator determinations on admissions or new schools opening). Once the department has indicated that your policy appears to comply with the School Admissions Code, it should be determined as final and submitted to the local authority. The local authority is required by the School Admissions Code to provide information on schools opening during the year and to update its website to provide information on your school's admission policy.

## Your admission arrangements

10.26 We have developed comprehensive [guidance](#) to help you develop your first set of arrangements. Schools must use the admissions template when drafting an admission policy and use the drop-down oversubscription criteria/admission processes within the template when drafting the policy. Arrangements, including



applications forms, must be clear, fair and objective, and must comply with the School Admissions Code.

## Appeals

- 10.27 Parents whose children have not been offered a place at your free school have the right to appeal, and your admission arrangements must include information about this.
- 10.28 It is the responsibility of the trust to set up an independent appeals panel in accordance with the School Admission Appeals Code, but local authorities, as well as other bodies, will run appeals services and you may want to consider buying into one of these to run your appeals.
- 10.29 If you want to manage your school's own appeals, you should be prepared to commit time, money and resources to it. You will need to ensure the appeals panel is completely independent of the school and trust. Whether or not you contract out the service, it is the trust's responsibility to ensure that panel members and the clerk are properly trained in accordance with the requirements of the School Admission Appeals Code.

## Consulting on your school's admission arrangements

- 10.30 In the pre-opening period, you should include at least an outline of your proposed admission arrangements as part of your Section 10 consultation, and should take into account any responses you receive. Once the school's funding agreement is signed and the arrangements are determined and published, you cannot make any further changes to them, unless they are needed to comply with the School Admissions Code.
- 10.31 Once your school is open, you will need to consult, in accordance with the School Admissions Code, on your admission arrangements if you propose any changes, and at least every seven years even if you do not want to make any changes.

## Special free schools

- 10.32 Recruitment and admission to special free schools is via an Education, Health and Care Plan (EHCP) made by a local authority, which names the school. The only exception to this is where the Secretary of State has agreed, in the funding agreement, that the school can also admit a minority of pupils with the type of special educational needs the school specialises in, but without an EHCP. See [SEND Code of Practice](#) for details. Such innovative proposals will only be approved as an exception, and only if a strong case can be made.

10.33 It is important to remember that as the admissions authority for your school, it is the trust's responsibility to get things right. This includes the following:

- setting out the school's age range, number of pupils with EHCPs provided for and type of SEN specialised in as part of the consultation you will carry out under Section 10 of the Academies Act 2010
- complying with the mandatory requirement to admit all pupils with an EHCP that names the free school and to have regard to the SEN Code of Practice
- publishing the school's SEN 'statement of provision' on the school's website. You must draft your policy using the [statement of provision template](#). [Additional guidance on special free school admissions](#) is also available on the free school admissions website
- in addition, you should publish separately on the school website any other narrative which sets the scene in terms of the proposed free school's target cohort or policies, including methods of teaching or curricular/specialist offer

## Children with EHCPs

10.34 Local authorities have a statutory duty to, where necessary, identify, assess and arrange provision for children with SEN. Where a local authority has carried out a statutory assessment and decided to issue an EHCP, it will issue a draft plan to parents. Parents can request for the local authority to name their preferred choice of school in their child's EHCP. The local authority must take into account parental requests, and must consult with a school where it is intending to name it in an EHCP. However, the final decision on the school to be named rests with the local authority responsible for maintaining the plan.

10.35 A special free school must admit a child where the school is named in a child's EHCP, even if the child's SEN is not a type of SEN for which the school is designated. A special school is organised to make educational provision for any pupils with SEN. They are designated for specific type(s) of SEN, and the main designations of SEN are set out in the SEN Code of Practice. Once a school is open, approval from the Secretary of State would be required if it wished to change or extend its designation to other types of SEN. It should publish details of its provision and capacity online.

10.36 A school has a duty to comply with an EHCP. If a school disagrees with being named on an EHCP, it can appeal to the Secretary of State through ESFA. It should only do so if attempts have already been made to resolve disagreements at the local level. Complaints can only be considered under limited circumstances: if the local authority has acted unreasonably or has failed to carry out one of its key duties under the Education Acts, including its SEN duties.

- 10.37 If parents disagree with a school being named in their child's EHCP, they have a right of appeal to the first-tier tribunal (Special Educational Needs and Disability). Decisions of the Tribunal are binding on all parties.
- 10.38 If a special free school is allowed within its funding agreement to admit children without an EHCP, the process for admitting these pupils must be set out in an admissions policy that complies with the School Admissions Code. Lead contacts will be able to provide more information on this.

## **Consulting on your school's arrangements**

- 10.39 In the pre-opening period, we advise that you set out details of the size and type of the provision your school will offer and any proposed admission arrangements (if admitting children with SEN but without an EHCP) within your Section 10 consultation. Once you have taken account of any responses to your consultation, published your final arrangements on your website and signed your funding agreement, you should not make any changes to the arrangements.
- 10.40 Once your school is open, you will need to consult on your admission arrangements for non-statemented pupils if you propose any changes, in accordance with the School Admissions Code, and at least every seven years even if you don't want to make any changes. Once the school is open, you will have to carry out your consultation in the academic year before the new arrangements would take effect. This means that there is nearly a two-year lead-in period before you admit children according to any changed arrangements.
- 10.41 If you wish to make any changes to the type of special needs the school specialises in or the size of the school, age-range, or similar, this will require a change to your school's funding agreement to be agreed with ESFA on behalf of the Secretary of State once the school is open.

## **Alternative provision free schools**

- 10.42 Alternative provision (AP) free schools must be principally concerned with providing full-time or part-time education for children of compulsory school age who may not otherwise receive suitable education for any period because of illness, exclusion, or another reason. This means that the majority of pupils (over 50%) must be of compulsory school age (between 5 and 16 years old). AP free schools may also choose to cater for some 16-19 year olds, but they must number less than 50% of your students.
- 10.43 Children of compulsory school age can only be admitted to an alternative provision free school by being referred by commissioners (local authorities or schools), using their existing referral powers or duties.

- 10.44 AP free schools have the freedom to adopt a policy whereby students or their parents can choose to apply for a post-16 place, but this is not compulsory. Applications to AP free schools for post-16 places should be managed through the same process as applications to 16-19 provision at mainstream schools. It is not compulsory for a student to attend a specific school or college post-16, so any referral system for students over compulsory school age would also require an application from the student to ensure they were willing to attend.
- 10.45 The School Admissions Code does not apply to referrals or post-16 admissions at an AP free school. AP free schools can adopt code-compliant post-16 arrangements if they wish, but the minimum requirement is that they follow our guidelines on admissions to 16-19 free schools.
- 10.46 As an academy trust, you are responsible for ensuring that the referral policy and any post-16 admissions policy comply with the funding agreement. That means they must be fair, transparent and objective, admit any pupils with statements of special educational needs or an EHCP naming the school, and give highest priority to looked-after children and previously looked-after children.
- 10.47 Your referral/admission policy should include the following:
- your school's referral process for children of compulsory school age, ensuring that it complies with referral powers and duties. Need is assessed by the commissioner, so it should not include an additional process for the school to consider the need for a referral other than to determine that the child is genuinely not suitable for mainstream education. The school should include a tie-break to decide which student is admitted if there are more referrals than places
  - your school's referral or application process for post-16 provision, if applicable. You need to state whether applications from post-16 students will only be accepted if they have also been referred by commissioners, or whether they can also apply independently of any referral. You will need to set out how you will admit pupils in a fair, objective and transparent way
  - a process for consulting on and finalising the new arrangements if you want to change your school's admission or referral arrangements once the school has opened
  - a process for managing referrals to the school, ensuring systems are in place to manage and track referrals from the opening date
  - information to make sure that unsuccessful commissioners and others are aware that they can submit complaints about the referral process or complaints about the post-16 admission arrangements to the ESFA
- 10.48 Alternative provision free schools should be aware of the Fair Access Protocol. It is the mechanism for ensuring children who are hard to place are allocated a

school place quickly during the school year. The requirements in relation to alternative provision are set out in the [Alternative Provision Statutory Guidance](#).

## **Referrals: commissioners' responsibilities**

- 10.49 Statutory guidance sets out the government's expectations of local authorities and maintained schools that commission alternative provision and pupil referral units. The government expects those who are not legally required to have regard to the statutory guidance (for instance, academies) to use it as a guide to good practice.
- 10.50 Local authorities are responsible for arranging suitable education for permanently excluded pupils, and for other pupils who – because of illness or other reasons – would not receive suitable education without such arrangements being made.
- 10.51 Governing bodies of schools are responsible for arranging suitable full-time education from the sixth day of a fixed period exclusion. Schools may also direct pupils off-site for education to help improve their behaviour.

## **The referrals/admissions process**

- 10.52 Statutory guidance sets out that there should be clear criteria for referring and admitting pupils, including those who are dual registered. Pupils should be dual registered from the beginning of the first day on which the school has commissioned the alternative provision. For the purpose of the school census, a pupil should be dual main registered at their school and dual subsidiary registered at the alternative provision.
- 10.53 As part of your school's published referral policy, you will need to decide how you will effectively manage referrals and engagement with your commissioners throughout the academic year. If you also want to admit pupils, by application, to any post-16 provision, you will need also to adopt an admissions policy.
- 10.54 The referral policy and any admissions policy should be part of the same document. For your referral process, you will need to be clear and open about how it operates. It is important that you are clear about the type of cohort you wish to cater for so that potential commissioners will understand the type of provision you offer. Your published referral/admissions policy should make it clear to commissioners how and when to make referrals. Your criteria should be fair and objective so it is clear how decisions are made – this will also minimise the chance of potential challenges or complaints.
- 10.55 Schools are required to use the [AP referral template](#) to draft their referral policy. A model commissioner's referral form is also included.

## Consulting on your referral and admission arrangements

- 10.56 In the pre-opening period, we advise that you include your referral and, if relevant, admissions policy as part of your Section 10 consultation. Once you have taken account of any responses to your consultation, published your final policy on your website and signed your funding agreement, you should not make any changes to the arrangements during the rest of the school year.
- 10.57 If you admit students post-16 (through student application), your policy should be reviewed and published on an annual basis to take account of changing demographics in your area. We recommend that you consult local people on any changes and publish your policy each year in September, for the following September's admissions. Your policy for 2019 admissions should therefore be published in September 2018, or as early as possible if this is not achievable.
- 10.58 You should also keep your policy on referrals under regular review and respond to any demographic changes.
- 10.59 It is possible for people to submit complaints about your referral and admissions policy to ESFA, which will ensure that the policy is fair, clear and objective, in accordance with the funding agreement.

## 16-19 free schools

- 10.60 As an academy trust, you are responsible for admissions to your free school. This means you are responsible for:
- making sure the free school's admission arrangements are fair, objective and transparent
  - managing applications to the institution. In most cases you will need to manage these directly, although in some areas post-16 institutions co-operate to co-ordinate admissions
  - organising an independent admission appeals process
- 10.61 As 16-19 free schools are not legally schools but educational institutions, your free school is not covered by the School Admissions Code. However, its arrangements do need to be fair, clear and objective. Parents/prospective students still need a clear understanding of how and when places are offered, whether there are minimum entry requirements, whether there will be a test or an interview as part of the application process, and which criteria will be used to decide how applications will be prioritised. Arrangements should therefore be as straightforward as possible and be clear how criteria are to be applied.

10.62 Unlike mainstream schools, there are no national co-ordinated deadlines for when applications to post-16 institutions need to be made. Institutions generally set their own deadlines based on how large and/or oversubscribed they are (and therefore how long they need to consider initial applications). Our strong advice is that you should aim to make provisional offers to students in the spring term, so they applicants are clear about any academic conditions you will place on their offer sufficiently in advance of sitting their exams in the summer. An outline timeline might look like this:

- invite applications from the autumn, with an initial application deadline no later than early spring
- sift applications and apply selection criteria during the spring term
- make conditional or unconditional offers before Easter, so students are clear what requirements they will need to meet
- confirm places once students have received their GCSE/AS Level results in August (or earlier if you are offering unconditional places or places based on predicted grades)

10.63 You will need to include your timeline in your admissions policy, making it clear to students and parents how and when to apply.

## **The admissions process**

10.64 You are required to draft your admission policy using the [template](#) on the free school admissions website. Your criteria should be fair and objective so it is clear how decisions are made – this will also minimise the chance of potential challenges or complaints. There are some key things all admission arrangements should include:

- an admission number for the institution, or admission numbers for courses, for each year of entry into the institution. This number sets the minimum number of pupils the free school will admit each year
- clear oversubscription criteria
- details of how and when applications can be made
- an application form
- details of a waiting list
- details of your independent appeals process

## **Oversubscription criteria**

10.65 If you have more applications than places, you will need to apply clear oversubscription criteria to help you allocate places fairly. As a 16-19 academy,

you have a great deal of flexibility about how you admit students. You can select by criteria such as ability, qualifications, tests, but if you choose to do this, you must be clear about your intentions from the start, and explain in your admissions policy the requirements necessary to be admitted. You can set specific requirements for specific courses, and you can turn down applicants you have offered places to if they do not subsequently meet the academic requirements. Beware of setting your minimum criteria too high or making the application process too onerous for students: you do not want to have empty places in September. If you have more qualified applicants than places, you can sift them by applying your published admissions criteria.

- 10.66 You are required to admit all students with an EHCP naming the free school. Although you are not required to, we would encourage you to give first priority within your oversubscription criteria to looked-after children and previously looked-after children.
- 10.67 You then need to list the rest of your free school's oversubscription criteria in order. You need to think carefully about these and make sure they strike the right balance between admitting the students who will thrive and benefit most from the provision you offer, and being overly complex, burdensome, or inadvertently disadvantaging a prospective student.

## Offering places

- 10.68 Once your application deadline has passed and you have applied the admission criteria, you can choose to make either conditional or unconditional offers. Before your funding agreement is signed, you should only make conditional offers, in case there is any delay in opening. You do not need to have signed your funding agreement to make conditional offers, but you should advise your prospective students that they may wish to have an 'insurance' place.
- 10.69 At the point the department is ready to enter into a funding agreement with you, your lead contact will want to know how many formal applications have been made and, from March onwards, how many conditional offers have been made and how many offers have been accepted. Information about 'expressions of interest' will generally not suffice.

## Finalising choices

- 10.70 Unlike a school with a sixth form where students can move into Year 12, you need to create opportunities to engage with students after you have offered them a place. It is beneficial to both you and them if you continue to get to know them and help them finalise their plans, such as which A-Levels/vocational subjects they want to study. This will help you plan timetables and teaching loads, and helps ensure students have a strong start at your institution. We suggest you host a



'getting ready' day for students, much like a secondary school would hold an induction for students moving from primary schools.

- 10.71 It is also important to have opportunities to meet with students individually between GCSE/AS Level results and the start of term, in case they or you think they might need to adjust their plans.

## **Waiting lists**

- 10.72 You should keep a clear, fair and transparent waiting list and be clear as to how long you will keep it. Our advice is that you should keep a waiting list up until the first day of the academic year, and many post-16 institutions choose to maintain it for a longer period. Students on the list should be ranked in line with your published oversubscription criteria.

## **Appeals**

- 10.73 Students who have not been offered a place at your free school should have the right to appeal. Your admission arrangements must tell students about their right to appeal and the process, deadline and contact details for making an appeal.
- 10.74 Local authorities, as well as other organisations, will operate an appeals service for school admissions, and you may want to consider buying into that service to run your appeals process. In doing so, however, you need to make sure they understand that as a 16-19 academy you do not have to abide by the School Admissions Code or the School Admissions Appeals Code.
- 10.75 If you want to manage your own appeals, you should be prepared to commit time, money and resources to it. You will need to set up an appeals panel, which should be independent of the institution. It should comprise a clerk, and we advise at least two other people. We strongly recommend you provide training for all panel members.

## **Administration and verification of information**

- 10.76 In operating your admission arrangements, you can request proof that the information provided in the application form is valid. For example, you can ask for a proof of address to confirm that a student lives where they say they do, but recognise that many students won't have access to the same types of proof of address that their parents would. You must not ask for evidence that includes, for example, parents' financial or marital status, or first languages of the parents and family.

## Consulting on your arrangements

- 10.77 In the pre-opening period, we advise that you include your 16-19 free school's proposed admission arrangements as part of your Section 10 consultation. Once you have taken account of any responses to your consultation and published your final arrangements on your website and we have signed your funding agreement, you should not make any changes to the arrangements until the application process is over for the year. It should be reviewed and published on an annual basis to take account of changing demographics in your area. We recommend that you consult local people on any changes and publish your policy each year in September for the following September's admissions. Your policy for 2018 admissions should therefore be published in September 2017, or as early as possible if this is not achievable.
- 10.78 It is possible for people to submit complaints about your policy to ESFA, which will ensure that the policy is fair, clear and objective, in accordance with the funding agreement.

## LINKS TO FURTHER INFORMATION

- [Table 7 Admissions: checklist of activities](#)
- [School Admissions Code](#)
- [School Admission Appeals Code](#)
- [Free Schools Admissions Guidance](#)
- [Alternative provision statutory guidance](#)

# 11. Religious character

## Key messages

- 11.1 If you want particular beliefs to be reflected in the life of your school, and specifically in your curriculum, staffing and admissions policies, we require you to seek a 'religious designation'. This is a legal recognition that your school will have a religious character. A faith designated school has the following freedoms which will allow you to maintain and develop the religious character of the school:
- apply up to 50% of pupil admissions by reference to faith (when the school is oversubscribed)
  - appoint teachers by reference to faith
  - deliver religious education and collective worship according to the tenets of the faith of the school
- 11.2 Your school's religious designation does not come into force until you have signed your funding agreement with the Secretary of State and the legal process for religious designation has been completed.
- 11.3 It is important to note that the freedoms set out above are not available to free schools that wish to register as having a 'faith ethos' (a part of the independent school registrations process).

## Applying for a religious designation

- 11.4 In order for your school to have a religious designation, you will have to satisfy the Secretary of State that the conduct of the school or the provision of education is, or will be, in accordance with the tenets of one or more religions or religious denominations, **and** that **one or more** of the following applies:
- some or all of the premises to be occupied by the school will be provided on trust in connection with (i) the provision of education, or (ii) in connection with the conduct of an educational institution in accordance with the tenets of one or more religions or religious denominations
  - at least one trustee is a person appointed to represent the interests of one or more religions or religious denominations
  - the governing instrument of the school provides that the school shall be conducted, or some or all of the education shall be provided, in accordance with the tenets of one or more religions or religious denominations

- 11.5 In advance of approving a religious designation application, the Secretary of State may consult the relevant religious authority, or any other religious body. The Secretary of State will need to be assured that your school will be conducted in accordance with the tenets of your faith.
- 11.6 In order to apply for religious designation, you need to ask your lead contact for the [FSRDAp1 form](#) and return it to them for processing as soon as possible.
- 11.7 Please note that 16-19, special and alternative provision free schools cannot be designated as having a religious character, although they may have an ethos or worldview that is reflected within the vision and values of the school.
- 11.8 Faith designated free schools with nursery provision are able to reflect their religious outlook within the life of the nursery – for example, by celebrating religious festivals or using stories based on religious texts. They are not permitted to apply any faith criteria for admissions to nursery places, and the nursery must abide by the same requirements in the funding agreement and regulations as apply to the rest of the school.

## **What additional responsibilities come with being a faith free school?**

- 11.9 The government is keen for all schools to support inclusivity and integration between communities. All schools must be inclusive – whatever their religious character or ethos. Trusts that are opening a faith designated free school will be expected to provide evidence of their commitment to inclusivity and community cohesion and plans to support this, which will be tested rigorously throughout pre-opening. There are a number of ways you could demonstrate your commitment to inclusivity:
- plans to develop a sustained and structured linking programme with a school of a different or no religious designation, to create meaningful relationships between young people of different faiths (or no faith). Linking could include sharing teachers and resources, conducting joint lessons, assemblies or sporting activities.
  - having diversity on the trust's board by including one or more members/trustees who is of another faith or no faith
  - setting up a mixed-faith multi academy trust with schools of different faiths or no faith that will be used to expose pupils in your faith designated school to peers from different religious and ethnic backgrounds
- 11.10 We expect faith designated free schools to appeal to a wide range of parents and pupils. You therefore need to ensure that your school policies are inclusive, your school is welcoming to pupils of other faiths or no faith and that your school is likely to attract applications from all parts of the local community, not just those of your faith. This includes ensuring that your school policies and curriculum would

not deter pupils from other faiths or no faith from applying for a place at the school, or prevent their children from playing a full part in the life of the school. Policies that might deter applicants from other faiths or no faith a combination of the following:

- lessons taught in community languages
- large proportions of curriculum time devoted to faith-related studies
- restrictive dietary requirements
- any separation of pupils, including when they are eating
- the mandatory wearing of symbols or clothing associated with your faith or world view

11.11 Parents have the right to withdraw their children from religious education at any age and from collective worship until the age of 16. From the age of 16, the right to opt out of collective worship passes to the pupil. Your school must provide a meaningful alternative for pupils whose parents wish to withdraw them from religious education, collective worship or other faith-related studies.

11.12 Like all free schools, you must also adhere to the conditions set out in your funding agreement. You will also need to demonstrate a commitment to ensuring that your curriculum and ethos will prepare pupils for life in modern Britain.

## **What does a religious authority do and how do we find one?**

11.13 Most faith schools will be formed by groups that look to a religious body or organisation for guidance on how their religious character should be expressed in the life of the school. Therefore, in most cases you will have a 'religious authority' who will have two consultation roles:

- identifying who will conduct the inspection of your school's religious education and collective worship (commonly known as the Section 48 inspection)
- providing advice on admission arrangements and specifically consulting with them on how you should define suitable adherence to your faith in your admission arrangements

11.14 In relation to section 48 inspections, the religious bodies are as follows:

Faith designation	Consultation body
Church of England or Roman Catholic	The appropriate diocesan authority
Jewish	Jewish Studies Education Inspection Service
Methodist	Education Secretary to the Methodist Church
Muslim	Association of Muslim Schools UK
Sikh	Network of Sikh Organisations
Seventh-day Adventist	Education department of the British Union Conference of the Seventh-day Adventists

11.15 The religious authorities in relation to admission arrangements are listed in [Schedule 3 of the School Admissions \(Admission Arrangements and Co-ordination of Admission Arrangements\) \(England\) 2012](#)

11.16 If your faith is not covered by any of the bodies listed above – for example, groups intending to seek designation as ‘Christian’ – you will need to identify an alternative body. Please get in touch with your lead contact for advice.

11.17 You should also get in touch with your lead contact if your faith is covered by the list above, but your intention is to name an alternative religious body.

11.18 You should be clear about the role you intend the religious authority to play in the design and running of your school, beyond the consultation role required by law.

11.19 Those groups opening a free school designated with a Church of England religious character will also need to agree to the [Church Supplemental Agreement](#) alongside their funding agreement. This document provides more detail on the roles of the diocesan board, the trust and the Department and how they will work together on issues relating to land, intervention and support and termination.

## Can free schools recruit teachers before the school obtains religious designation?

11.20 Being a designated faith free school gives you limited exemptions from the Equality Act. This includes being able to give preference to recruiting teachers of the faith.

11.21 In order to be designated officially, you will need to have signed a funding agreement with the Secretary of State. If you wish to appoint teachers before this point (before you are designated), you will need to be able to demonstrate that adherence to a particular faith is a genuine occupational requirement (such as for the principal designate, or an RE teacher). Where this is the case, you may be able to advertise, hold interviews and employ teaching staff prior to the designation of the free school. However, wherever possible you should refrain from entering into an employment contract until you have obtained religious designation and signed a funding agreement.

## **Free schools that register a faith ethos**

11.22 If you want your school to reflect a distinct ethos aligned with a particular religion, you can register that your school has a religious ethos. The ethos could then be reflected within the vision for the school, the values the school represents and the importance placed on particular beliefs.

11.23 Unlike schools that are faith designated, schools registered with a religious ethos are not entitled to any of the freedoms of designated faith schools, except in the appointment of senior leaders where the faith of candidates can be taken into account.

11.24 As with all other schools, your school will be expected to be inclusive in its outlook and practices and be likely to attract applications from pupils of no faith and other faiths. Your lead contact will expect to see evidence of actions you are taking to encourage applications from the wider local community.

11.25 Throughout pre-opening, we will expect groups who are proposing a school that will have a religious ethos to be able to explain clearly how faith will (or will not) manifest itself in, and influence, the curriculum, school policies and the look and feel of the proposed school. We will also expect you to be able to demonstrate how you will make this clear to parents and pupils.

11.26 Schools with a faith ethos, in common with all schools without a religious-designation, can apply to be exempted from the requirement to provide broadly Christian collective worship. This may be where the belief of the majority of its pupils or the local community is such that another faith would be more appropriate.

## **LINKS TO FURTHER INFORMATION**

- [View Table 8 Faith: checklist of activities.](#)

## 12. Equality duties

### Free schools' duties under the Equality Act 2010

- 12.1 Every child in this country should have the opportunity to get the very best education, giving them knowledge and skills that set them up for life. The free schools programme supports equality of opportunity, through opening high-quality new schools in the areas where they are most needed.
- 12.2 The Equality Act 2010 provides a single, consolidated source of discrimination law. The Act makes it unlawful for your trust to discriminate against, harass or victimise a pupil or potential pupil:
- in relation to admissions
  - in the way it provides education for pupils
  - in the way it provides pupils access to any benefit, facility or service
  - by excluding a pupil or subjecting them to any other detriment
- 12.3 When your free school opens, it will be a public authority. [Section 149 of the Equality Act 2010](#) requires all public authorities when exercising their functions and making decisions to have due regard to the three aims of the Public Sector Equality Duty (PSED). The PSED has three key aims:
- to eliminate unlawful discrimination, harassment, victimisation and any other conduct that is prohibited under the Act
  - to advance equality of opportunity between those who share a relevant protected characteristic and those who do not
  - to foster good relations between those who share a relevant protected characteristic and those who do not
- 12.4 Meeting your obligations under the Equality Act are a continuing obligation on your trust, and must be considered throughout the pre-opening phase and once the school is open.
- 12.5 The Secretary of State has a statutory duty to consider the potential equality impact (positive and negative) of her decisions, before deciding whether to enter into a funding agreement with you.

### Summary of the key tasks

- 12.6 Throughout the pre-opening period, you must consider how the decisions you make will affect people with different protected characteristics.



12.7 The protected characteristics that you need to consider are:

- age
- disability
- gender reassignment
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

12.8 You also need to note that discrimination on the grounds of marriage and civil partnership is unlawful.

## How we will work with you

12.9 When making all your key decisions in pre-opening you must ensure you comply with the equality duty. Your lead contact at the department will be looking for evidence that the equality duty is being considered throughout the pre-opening phase.

12.10 At meetings, you should aim to keep your lead contact informed about how your equality duties are being met.

12.11 To show that consideration has been given to the relevant protected characteristics in the school plans and policies, some examples of the information the lead contact will need are as follows:

- details of your marketing plan, to show how you will engage with local communities to meet your duties to promote community cohesion
- your staff recruitment policy, to show how you will ensure that all candidates will be treated in a fair and transparent way during the recruitment process
- your SEN policy, to show what provision will be available for the pupils at the school and what other specialist provision will be available

12.12 Your lead contact will keep a record of all pertinent information. This will help the Secretary of State to assess the impact on people with reference to different protected characteristics. It will also show if there are any issues around equality that could prevent the trust or the Secretary of State from fulfilling their obligations under equality legislation.

## School food

- 12.13 Since September 2014, all government-funded schools (including academies and free schools) must offer free school meals to every infant pupil. The department is expecting all infant pupils to be offered a hot and nutritious free meal.
- 12.14 The Children's Food Trust (CFT) and the Lead Association for Catering in Education (LACA) run a free support service for schools that need help providing universal infant free school meals (UIFSM). The support service can be contacted on 0800 680 0080, or by email at [info@childrensfoodtrust.org.uk](mailto:info@childrensfoodtrust.org.uk).
- 12.15 Schools are encouraged to promote healthy eating and provide healthy and nutritious food and drink. The School Food Standards regulations apply to local authority maintained schools, academies that opened prior to September 2010 and academies and free schools entering into a funding agreement from June 2014. [Departmental advice on school food standards](#) is available on gov.uk. A summary of the standards and a practical guide are available from the School Food Plan website.

## LINKS TO FURTHER INFORMATION

- [View Table 10 Equalities duty: checklist of activities.](#)
- [Section 149 of the Equality Act 2010](#)
- [DfE Advice on Equalities Act 2010](#)

## 13. Staffing, education plans and policies

### Introduction

- 13.1 During the pre-opening phase, you will need to turn the detailed staffing and education plans in your application into reality to ensure that everything is in place to open successfully – from recruiting high-quality staff to having high quality education policies and schemes of work in place. You will need to ensure joint planning of finance, curriculum and staffing throughout the process, to deliver an affordable curriculum that meets pupils' needs.
- 13.2 You will need to have some policies in place early for consultation and pupil recruitment. Others will be needed ahead of the readiness to open meeting (ROM) with the department, and the Ofsted pre-registration inspection. You should also consider what you will need ahead of your first full inspection, which will normally take place during year three of opening.

### Key Messages

- 13.3 An education adviser (EA) from the department will be allocated to your project and will work with you through your lead contact. EAs are external contractors and highly experienced education professionals who have worked in senior education roles, typically as heads of outstanding schools and/or as Ofsted HMIs or inspectors.
- 13.4 Appointing a high quality principal designate is probably the most important thing you will do as a trust during pre-opening. The recruitment process should not take place before the provisional opening date has been confirmed. Getting the right person is of critical importance to the success of your school. The principal designate will be involved in appointing other staff and writing the detailed education brief, education plans/policies and schemes of work you will need ahead of opening. It may take more than one recruitment round before a suitable candidate is appointed and this presents a risk to the successful opening of your school. You must escalate to your lead contact if you are experiencing difficulties recruiting a principal designate.
- 13.5 All serving head teachers and teaching staff will be bound by contractual resignation dates and you will need to factor this into your recruitment plans. Appointments made before a funding agreement is in place should be conditional on the trust entering into the funding agreement and the school opening.
- 13.6 As a trust, you have statutory duties in terms of the policies that need to be in place before opening. The department has published a [guide for schools](#) (including free schools) about these duties. The department's EAs do not routinely

sign off education plans and policies. We may ask to see some, but this will depend on our level of engagement with your project. EAs will always review the pupil assessment, recording and reporting policy and safeguarding policy.

- 13.7 It is vitally important that as an academy trust you fully understand your responsibilities for safeguarding the children in your care. You should consult the department's [Keeping children safe in education](#) (KCSIE), [Working together to safeguard children](#) and [What to do if you're worried a child is being abused: advice for practitioners](#) guidance documents.
- 13.8 Lead contacts will be asking you to report on recruitment of staff (in the context of pupil recruitment and financial plans) and on the development of your education plans and policies – some of which will be needed at specific points, including ahead of the Ofsted pre-registration inspection and at your readiness to open meeting (ROM).

## Risks

- 13.9 Inspected schools that have not had a change in principal designate are more likely to receive a good or better Ofsted judgement than those that have, so it is vital that you find the right person for the job. It may take a few attempts to recruit a suitable principal designate so it is sensible to consider when to begin the recruitment process very carefully as serving head teachers and teaching staff are bound by contractual resignation dates.
- 13.10 Over half of free school principal designates are new to the role. Where a principal designate candidate has no leadership experience or is a direct appointment, a benchmarking exercise should be carried out by an EA who will advise on the suitability of the candidate for the role. You should also think about the support and mentoring programme that you will provide to support them.
- 13.11 Although many free schools are keen to appoint newly qualified teachers (NQTs), it will be important, particularly for subject specialists in secondary schools, to consider where subject specific support might come from if there are no other specialists in the school in the first and even second year of opening. There might be a similar need for caution when recruiting senior and/or middle leaders. Having little relevant leadership experience can significantly limit leadership capacity at a time when it is needed to establish and implement school improvement systems.
- 13.12 Once you have your principal designate in place, it is important to get your wider tracking and assessment systems in place. Failure to do this affects your ability to get a good Ofsted judgement.

## Essential information you'll need to provide to us

- details of your proposed staffing structure
- pupil assessment, recording and reporting policy
- safeguarding policy
- any other education plans or policies that are requested by the lead contact or EA

## Summary of key tasks

### Appointing a principal designate

- 13.13 Principal designate appointments can be made either through open national recruitment or as a direct appointment (without advertising). Given the importance of the appointment, you must fully involve your EA in any open national recruitment of the principal designate. Trusts must also notify their lead contact before going against advice from their EA.
- 13.14 In exceptional circumstances (such as where an experienced multi academy sponsor is behind the project), we may agree that an EA does not need to be involved. Your lead contact will discuss this with you.
- 13.15 Direct appointments can be made where appropriate but, as a free school trust, you will need to be able to show how the appointment was transparent and fair.
- 13.16 Once you have identified a suitable candidate, the department may suggest that they undergo a benchmarking exercise. This will involve the candidate being interviewed by your EA and having their performance assessed against relevant leadership standards. The results can then be used to inform the design of a development programme, which you can then take forward with the principal designate.
- 13.17 Additionally, you may choose to spend the money you would have spent on advertising the post to put your preferred direct appointment candidate through an assessment to make an informed judgement about their suitability. Most large educational recruitment firms and universities run assessments for school leaders.
- 13.18 NSN has produced a [guidance document](#) to help you recruit your principal designate. This includes detailed advice based on the experience of successful free schools.
- 13.19 The principal designate of a free school forming a SAT will also be the accounting officer (in MATs the accounting officer will be the CEO of the trust). The role of the accounting officer includes a personal responsibility to the ESFA's accounting

officer and to Parliament for the financial resources under the free school's control. Further information about the role of the accounting officer can be found in the [governance section](#) of this guidance.

- 13.20 You will need to send a copy of the principal designate's contract to your lead contact when an appointment has been made. This is to ensure the department is aware of any costs that could be incurred as a result of the principal designate's salary being underwritten.

## **Finalising staffing structure and recruitment**

- 13.21 You will also need to finalise your staffing structure for all staff and recruit those needed in your first year. Alongside your principal designate, you will need to consider other key posts, including senior leaders, who must be carefully budgeted for. You might find it useful to consider the [Top 10 planning checks for governors](#), which provides some tools to help ensure that you are making the best use of resources when planning your staffing and curriculum.
- 13.22 As well as teaching posts, it is important to think carefully about who will take on the finance role, to develop the more detailed budget for year one and for pre-opening, and to regularly consider staffing plans against financial plans and pupils recruited. Only by doing so will you be able to demonstrate that your proposed staffing structure is affordable, both pre- and post-opening. Additionally, it is important to remember that your staffing structure and recruitment plans should not be confirmed until you have a firm idea of how many pupils you have recruited.
- 13.23 Most free schools advertise for staff in both national and local press. Some have found holding their own recruitment fairs a good way of attracting staff. Others have used agencies or organisations with talent pools. Many of the major education recruitment agencies have access to pools of staff. Your EA may also be able to advise you on what you could do to attract good staff.
- 13.24 NSN has negotiated a discount on advertisements made for staff and leadership appointments with the Times Education Supplement. More details about this, and other recruitment related offers brokered by NSN, can be found [here](#).
- 13.25 Remember that all serving head teachers and teaching staff will be bound by contractual resignation dates and you will need to factor this into your recruitment plans. For example, a serving head teacher will have to have accepted a post and resigned by the end of September for a January start, the end of January to take up an appointment in May, and the end of April for a September start. As it may take a few attempts to recruit a suitable principal designate, it is sensible to consider when to begin the recruitment process very carefully, factoring in that you will need confirmation of your provisional opening date first.

13.26 As with the considerations for subject specific support mentioned on 1.10 above, there might be a similar need for caution when recruiting senior and/or middle leaders. Having little relevant leadership experience can significantly limit leadership capacity at a time when it is needed to establish and implement school improvement systems.

## **Free school freedoms for appointing staff**

13.27 As the employer, you are responsible for appointing staff. If you are working with an education provider, you may pass the responsibility on to them but you may still want to be involved in the recruitment process, as you will be the legal employer of all staff. As academies, free schools have some freedoms in appointing staff that other schools do not:

- you are not bound by the national pay and conditions document and you can set your own pay and conditions. However, many trusts have asked us about national pay scales for comparative purposes. These are set out in the [Teachers Pay and Conditions Document](#)
- you are not required to employ staff with Qualified Teacher Status (QTS), with the exception of the SEN co-ordinator (SENCO) and the designated lead for children in care. However, this freedom does not apply to special free schools.
- your principal designate is not required to hold the National Professional Qualification for Headship (NPQH)

13.28 If your free school includes nursery provision, you will need to ensure that your staff: child ratio meets the minimum requirements outlined in the [early years foundation stage framework \(EYFS\)](#). Exact ratios depend on the age of the child, the level of qualification of the staff and the type of setting. Your lead contact and EA will need to satisfy themselves that your planned staffing numbers meet these requirements. For academies (including free schools), the staff: child ratios for nursery provision for children aged 3 and over are as follows:

- at least 1:13 if at least one staff member holds QTS, Early Years Professional Status, Early Years Teacher Status or another relevant level 6 qualification, and at least one other member of staff holds a relevant level 3 qualification (for instance, NVQ level 3 in childcare)
- at least 1:8 if no member of staff holds a level 6 qualification listed above, but at least one member of staff holds a relevant level 3 qualification and at least half of all other staff hold a relevant level 2 qualification

## **Free schools' statutory responsibilities**

13.29 There are some statutory requirements on free schools with regard to staffing that you should be aware of:

- as stated above, the SENCO and designated lead for children in care must hold QTS
- as an employer, you have a statutory duty to offer all your staff membership of either the Teachers' Pension Scheme (TPS) or the Local Government Pension Scheme (LGPS). Pension contributions must start with employment, so you should ensure that pension provisions are in place for staff taking up post prior to the free school opening (during pre-opening)
- if your school is to be a designated faith school and you wish to recruit teaching staff on the basis of faith, you will need to seek designation as a school with a religious character. you can find more information on how to do that in the [faith section](#) of this guidance

13.30 Serving head teachers and teaching staff are bound by contractual resignation dates, and appointments made before a funding agreement is in place should be **conditional** on you entering into the funding agreement and the school opening. You must escalate to your lead contact if you are experiencing difficulties appointing high quality teaching staff.

13.31 We recognise that you may be asked by a potential principal designate for additional security where a funding agreement has yet to be signed and they are being asked to hand in their resignation and accept the job at the free school. In such cases, the department will underwrite the salary costs, plus on- costs, should the free school not open, or if its opening is deferred by a year. **We will only underwrite the principal designate salary once the provisional opening date has been confirmed and we have started to release PDG beyond the initial allocation.** The salary would be underwritten for up to two consecutive terms from the point at which the decision is taken not to proceed. You can share this [letter](#) with your principal designate to this effect.

## TUPE

13.32 The Transfer of Undertaking (Protection of Employment) Regulations 2006 (amended 2013) (TUPE) protects employees by providing for their automatic transfer by operation of law under their existing terms and conditions when their work activities transfer from one employer to another. It only applies to employees; it does not apply to volunteers and it does not apply to agency workers (other than in respect of information and consulting obligations).

13.33 We would not usually expect TUPE to apply to a free school, if it is not replacing an existing school. Most free schools are new and additional schools; the only exception to this basic position is where existing provision (such as existing alternative provision or independent schools) convert to become a free school.



13.34 TUPE will usually apply where an existing independent school closes down and re-opens as a free school, but you may wish to take legal advice to confirm the position. The head teacher of the existing school would also generally automatically become principal designate of the free school unless there is a major change in respect of organisation of the provision of education services – again, it is advisable to take legal advice in these situations.

13.35 The TUPE regulations place a statutory obligation on the employer to inform and consult prior to a transfer taking place. The employer will need to inform their employees' representatives (the recognised union or, if there isn't one, elected representatives) of certain matters in writing:

- the fact that the transfer is to take place
- the date of the transfer and the reasons for it
- the legal, economic and social implications of the transfer for any affected employees and any measures which the employer envisages it will, in connection with the transfer, take in relation to any affected employees

13.36 There is no set period for the information and consultation process but it has to be long enough before a transfer, to enable the employer of any affected employees to consult the appropriate representatives. You should aim to provide the information and to start consulting as early in the process as possible. As a rough guide, we suggest this should be not less than 30 days before the transfer, but this is for the trust to determine.

13.37 If you know that staff will need to transfer, you will want to have information from the outgoing employer about the employees and any liabilities you may be taking on. The outgoing employer (the 'transferor') is legally obliged to notify you (the 'transferee') of employee liability information of any person employed who would be in scope to transfer. This includes:

- the identity and age of the employee
- the particulars of employment for the employee
- any relevant information such as disciplinary procedures taken against the employee
- any information on court or tribunal claims that the transferor has reasonable grounds to believe may be brought after the transfer
- information as to any collective agreements which will have effect after the transfer that are relevant to transferring employee

13.38 Even staff who are in the process of being disciplined will transfer, if in scope, and the transferee will then continue the disciplinary process to its conclusion. Staff

can object to the transfer, but if they do so unreasonably, they will lose any right to claim compensation for unfair dismissal or any redundancy rights. The basic assumption is that they are expected, if they are in scope, to transfer to the new organisation. They do so with their continuity of service protected and their terms and conditions protected. After a year, it is possible to harmonise terms and conditions, but only by agreement.

- 13.39 Some matters do not transfer, such as criminal liabilities and terms in relation to pensions. Again, specific legal advice may be necessary. Determining the application of TUPE is complex because a number of factors need to be considered. Each project is different and dealt with on a case-by-case basis. Trusts should always consult their own legal advisors regarding any potential TUPE issues.

## **Developing an Education Brief**

- 13.40 It is good practice to put all strategies and statements together into one document – the Education Brief – that provides detail of how your school will operate. This can be distributed to staff and governors before opening, so that everyone in the organisation understands the vision for the new school, the way that the school will operate, the educational programme that will be delivered, the goals that the school wishes to achieve and its ambitions for the future.
- 13.41 It is important to be clear what are the essential elements that constitute a good brief, how they may be constructed, and the audience/s it will be for and the purpose it has. It is also important to state how it may be put into practice and owned by the entire school, including the trust, governing body, the senior leadership team, staff and pupils and their parents. Details of what the Education Brief should contain are provided [here](#).
- 13.42 A well-developed Education Brief will do the following:
- inform your pre-opening planning and timescales
  - take you through your Ofsted pre-registration inspection successfully
  - help you choose the right staff and governors
  - ensure you are effective, safe and secure and achieving from first day of opening
  - be accessible and written in a way that you feel confident in sharing it with a wide range of audiences, internally and externally
  - be focused on pupil outcomes from the start
  - prepare you for your first Ofsted section 5 inspection and help you achieve a good or outstanding judgement

13.43 The Education Brief also provides valuable evidence and reassurance to lead contacts that you are offering a high quality and inclusive educational offer, and that the school is on track to be at least good. This will inform their judgement to recommend the Secretary of State to enter a funding agreement.

## Developing education policies

13.44 You have statutory duties in terms of the policies that need to be in place before opening. The department has published a [guide for schools](#) (including free schools) about these duties. This includes details of the policies that your school must have and how frequently they must be reviewed.

13.45 Policies may fulfil one or more of four requirements:

- a statutory requirement of education law or other legislation impacting on schools
- required prior to the funding agreement and are also a statutory requirement
- required for the Ofsted pre-registration inspection
- related to teaching and learning and may be requested during an Ofsted inspection post-opening

13.46 It is imperative that policies are in place by their respective deadlines.

13.47 You will be required to submit some policies before your [Ofsted pre-registration inspection](#) and an inspector may ask to see others on the day. There will be other detailed plans and policies you will need to have in place for your first Ofsted inspection (normally in year three of opening). In the [checklist of tasks](#), we have set out what needs to be done as a minimum, and by when, in the run up to opening. The checklist is not exhaustive but will give you an idea of what may be required, and when.

13.48 Closing the attainment gap for disadvantaged pupils is a priority for the department. Your education plans and policies should reflect the local context in which your school will operate and be designed to improve outcomes and enhance the life chances of children in the local community.

13.49 When planning your curriculum, you should ensure that this is aligned with the needs of children in the local area where your school will operate, including how you will address the specific forms of disadvantage affecting pupils. For example, if your school will be situated in an area where a high proportion of pupils speak English as an additional language, you should ensure that your approach towards literacy reflects this. You should also consider how your approach to teaching and learning will ensure the curriculum is delivered in a robust and effective manner and meet the needs of your expected intake.

- 13.50 If your free school includes 16-19 provision, you might want to consider offering 'T levels', from 2021 onwards. 'T levels' will be high quality, rigorous, level 3 classroom-based technical study programmes that will sit alongside Apprenticeships within a reformed skills training system. They will support entry to skilled employment in technical occupations and progression to higher education options (including higher technical qualification, higher apprenticeships, degree apprenticeships and technical degrees). The first three T levels will be available from 2020 from a small number of providers, and these T levels will be from the Digital, Construction and Education and Childcare routes. As T levels are rolled out, we expect the majority of funding for 16 to 19 year old students studying level 3 qualifications to be directed to T level and A level programmes.
- 13.51 The expression of interest for providers to deliver the first three T levels from 2020 closed in February 2018. However, you may wish to consider applying to take part in future rounds of T level delivery. There will be an opportunity for more providers to apply in the next round, which will be for the delivery of T levels from September 2021 when T levels from the first 6 technical routes will be rolled out. T levels from the remaining routes will be available from 2022.
- 13.52 Many free schools and academies have also found the overarching structure of the [education brief](#) helpful, as this brings together all of the school's strategic and detailed education plans and policies.
- 13.53 Exemplar education plans and policies are widely available. Exemplar policies are available on the [pre-opening section of the NSN website](#). You can also find them on local authority websites and from project management companies (where you are using one). You should tailor these to take account of the vision and curriculum plans for your free school.
- 13.54 Education plans and policies are not routinely signed off by the department's EAs. We may ask to see some, but this will depend on our level of engagement with your project. EAs will always review the pupil assessment, recording and reporting policy and safeguarding policy.
- 13.55 Non-faith free schools, like other non-faith academies and schools, may apply for an exemption (called 'a determination') from providing a 'broadly Christian' daily act of collective worship. Broadly Christian can be replaced with an alternative daily act of collective worship that better reflects the faith background(s) of the academy's pupils. The determination lasts for five years. If you wish to apply for this status, please contact your lead contact who will provide you with the relevant application pack.
- 13.56 You must also ensure that you have the following documents in place prior to opening:

- academies (including free schools) are required by law to publish specific information on their website. Guidance as to what must be included can be viewed [here](#)
- a scheme of work, setting out details of the programme of learning, must be written for each subject, or programme or study. These are usually prepared by the subject head of department, or subject/phase co-ordinator in a primary setting
- a School Development Plan for the opening year. This is a strategic document, typically constructed by the principal designate and senior team, which sets out the key objectives that the school wishes to achieve within the first years. This includes success indicators, actions, staff responsible, timelines and costings for the opening and subsequent years

## Measuring pupil performance

- 13.57 In order to demonstrate that your pupils are making progress, you will need to establish a baseline of pupils' current levels of attainment upon entry to your school. As such, you will need to develop a system for baselining before your school opens, otherwise you won't be able to demonstrate that your pupils have made progress. You will also need to implement a system of assessment that enables you to measure pupils' performance and a strategy for improving this.
- 13.58 Once your school opens, it is important that you review your success measures and expectations regularly, to improve your school's performance. This could include benchmarking your assessment data with other schools. As with your system for baselining and assessment, you should ensure that you have developed a robust plan for reviewing your school's performance before your school opens.
- 13.59 When designing your plans for measuring pupil progress, you should ensure that they consider how you will approach the following requirements:
- identify the learning needs of your disadvantaged pupils and inform approaches for tackling the individual issues faced
  - use appropriate data to inform teaching and drive progression and attainment for all pupils
  - monitor and evaluate whether your approaches for disadvantaged pupils are working
  - focus on measuring and improving quality of teaching in the classroom
  - involve parents and report progress to them

## Safeguarding

- 13.60 Schools and their staff form part of the wider safeguarding system for children. Safeguarding and promoting the welfare of children is everyone's responsibility. School staff are particularly important, as they are in a position to identify concerns early and provide help for children to prevent concerns escalating.
- 13.61 It is vitally important that as an academy trust you fully understand your responsibilities for safeguarding the children in your care. You should consult the department's [Keeping children safe in education](#) (KCSIE), [Working together to safeguard children](#) and [What to do if you're worried a child is being abused: advice for practitioners](#) guidance documents. All governing bodies must have regard to this guidance – that means they should comply with it unless there is good reason not to. When the school opens, we would expect it to be meeting the requirements as set out in KCSIE.
- 13.62 Every school must have a Single Central Record (SCR) which records in one central place specific information on every adult employed by, or coming into regular contact with, children on a voluntary basis (for example, in an excel spreadsheet, along with documentation in personnel files). This is a statutory requirement. A senior administrator or gatekeeper should maintain the SCR. The SCR must include for each adult employee, governor or volunteer whether the following checks have been carried out or certificated obtained, and the date on which each check was completed/certificate obtained:
- an identity check
  - a barred list check
  - an enhanced DBS check/certificate
  - a prohibition from teaching check
  - further check on people living and working outside the UK
  - a check of professional qualifications
  - a check to establish the person's right to work in the UK.
- 13.63 You can also find more information about what Ofsted will expect to see in place when you are inspected in their guidance [Inspecting safeguarding in early years, education and skills](#). This includes specific references to the Single Central Record (SCR). There are serious implications if a school fails to provide a complete an up-to-date SCR when requested. The school can be closed immediately if the SCR is not produced – and staff can be sent home if it is incomplete. The [safeguarding checklist](#) summarises these requirements and is a useful aide to keep on top of what needs to be in place.

## Education advisers

- 13.64 EAs are contracted by the department to provide expert educational advice. Your EA will normally be accessible through your lead contact.
- 13.65 You will need to have your own educational expertise in place to support you as a trust and the EA does not provide that support. As a minimum EAs will usually do the following:
- attend and contribute to the kick-off meeting
  - be involved in the process of appointing the principal designate
  - be involved in the process of appointing the chair of governors (unless already appointed) and comment on the quality of the governance plan
  - comment on the build-up of the senior staffing structure
  - comment on the quality of the [education brief](#) and education policies, in particular safeguarding and assessment
  - attend and contribute to the readiness to open meeting
- 13.66 There is a differentiated approach to the department's support across free school projects. The EA will normally devote between two and eight days to your project. The factors we will take into account in determining the level of EA support include the experience within your group and the complexity of your vision for the school. For example, if your educational expertise is limited, or the group has not set up a new school before, we may provide additional support.
- 13.67 The level of EA support may also change during the pre-opening period. For example, if a project has significant difficulty recruiting a principal designate, the level of support may increase.
- 13.68 After opening, your EA will normally continue to provide professional advice and challenge to ensure that your school is delivering a high standard of education to your pupils. Your EA will normally undertake first, fourth and sixth term visits to your school, reporting to the department on your progress and assessing your preparations towards your first full Ofsted inspection. You should ensure you check the Ofsted website regularly to keep up-to-date with any changes to the inspection framework.

## 14. Funding agreement

- 14.1 The funding agreement is the legally binding contract between the trust and the Secretary of State, which contains the terms and conditions upon which a free school is funded.
- 14.2 Entering into a funding agreement is an important decision for both parties so requires careful consideration. Your Regional Schools Commissioner (RSC) will need to be sure that your trust is ready to enter the agreement and is likely to establish and maintain a popular and successful school.
- 14.3 The contract sets out what the trust needs to do. This includes, for example, a requirement for admissions to be consistent with relevant admissions law. The trust must meet these (and other) requirements in order to receive funding. The funding agreement also sets out the circumstances in which a funding agreement can be terminated.
- 14.4 The Secretary of State will consider signing a funding agreement only if you are able to develop your plans to the required standard during the pre-opening phase. For mainstream (primary, secondary and all-through) schools, the ideal is to enter into a funding agreement before the relevant national admissions offer day in the year in which the school is due to open, to give parents receiving offers the confidence that the school will open that year. However, the Secretary of State will not enter into a funding agreement until they are confident – on the basis of advice from the relevant RSC – that the school will be good, viable, sustainable and successful, able to open on its proposed date, sufficiently secure about its permanent site, and that any conditions set during pre-opening or following assessment have been met. The Secretary of State can cancel or defer a project at any point during the pre-opening phase – even after your funding agreement has been signed – if your anticipated pupil numbers are not at a previously agreed level or if they consider that the school would provide an unacceptably low standard of education.
- 14.5 The Secretary of State does not enter into a funding agreement in respect of a nursery which is part of a free school, because nurseries receive their revenue funding from the local authority and/or fees charged to parents for provision above the ‘free’ entitlement. However, provisions around the use of the land for the nursery may need to be included in the funding agreement. Further information on nursery revenue funding arrangements is included in [section 6](#).
- 14.6 The [funding agreement checklist](#) at the end of this guidance sets out a non-exclusive list of key tasks you will need to complete in order to begin the process of agreeing the funding agreement for your school.



## Why does the department use model funding agreements?

- 14.7 The department produces model funding agreements for all types of academy, including free schools, studio schools and UTCs. There are different models available to reflect the requirements of different types of free school on the gov.uk website. Using model funding agreements helps the department ensure consistency across free schools.
- 14.8 The terms of the model funding agreement have been developed since the beginning of the free schools programme. The Secretary of State has agreed these terms and is not willing to negotiate different terms for individual projects. The only acceptable variations between different funding agreements are those clauses that reflect the specific circumstances of that school, such as land arrangements, planned capacity of the school, faith/non-faith provision and arrangements for free schools with predecessor schools. The model funding agreement makes clear where these variations will be made and your lead contact will tailor them accordingly before sending the document to you.

## When should we begin the process for entering into a funding agreement?

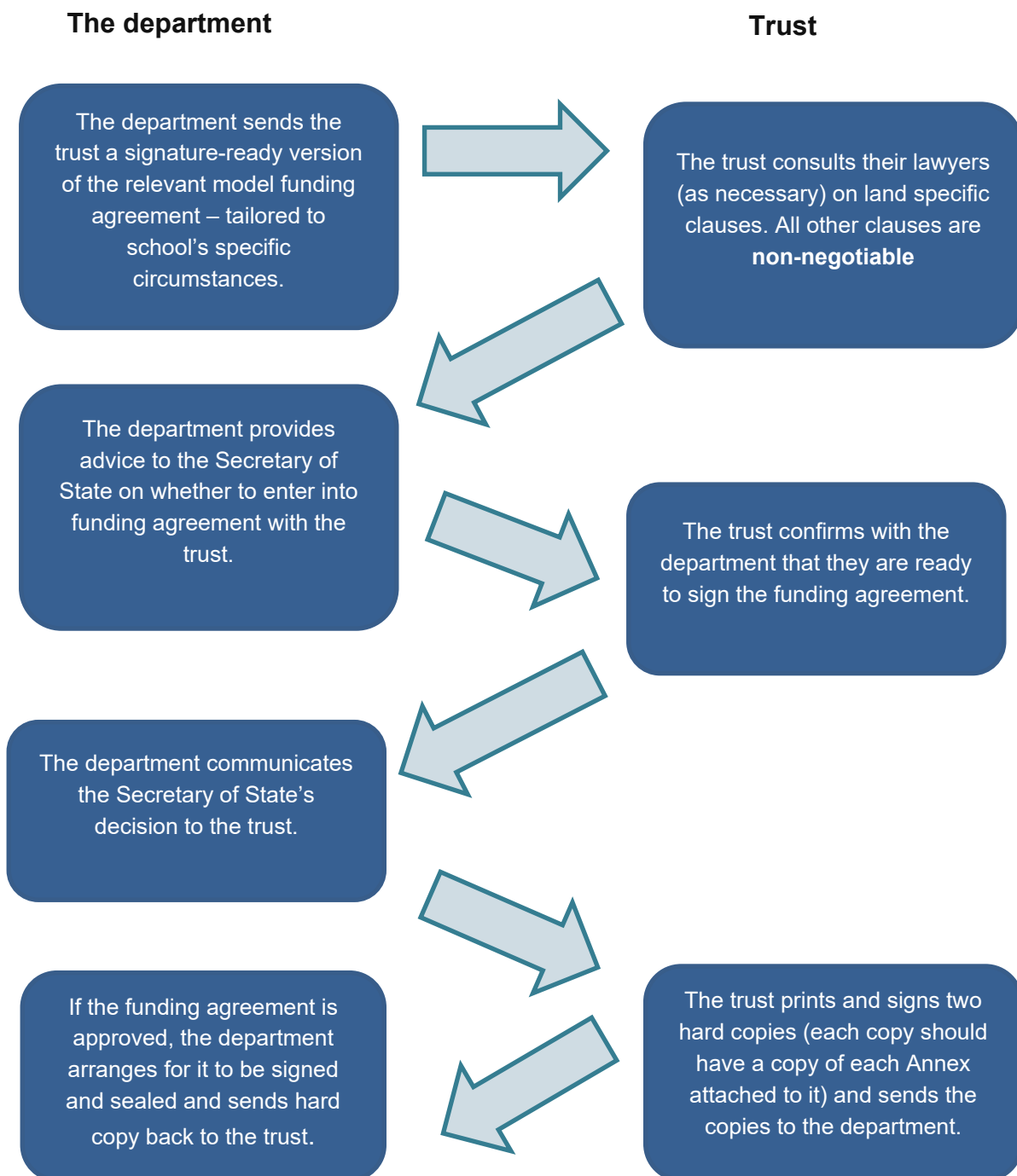
- 14.9 The timing for entering into a funding agreement will vary depending on the project. Your lead contact will decide the appropriate time for your project. Funding agreements are usually signed when a project has achieved all its key milestones and the lead contact judges that the schools is likely to be good and viable upon opening.
- 14.10 There are a small number of circumstances in which we might consider entering into a funding agreement before all these key milestones are completed. The most common circumstances are:
- when entering into a build contract for a permanent site
  - to enable schools to enter local authority co-ordinated admissions
- 14.11 We aim to have all funding agreements in place by the following dates in the year when your school will open, although this will depend on whether the project has achieved its key milestones and is on course to be good and viable upon opening:
- for mainstream schools, one month ahead of national offer day i.e. 1 February for secondary schools and 15 March for primary schools
  - for special and AP schools, by mid-April (one term before they open)

- 14.12 Your lead contact will normally want to arrange a formal checkpoint meeting with the trust to ensure that everything is in place to enable the Secretary of State to sign the funding agreement.
- 14.13 Before either party can begin the process of negotiating the funding agreement, there are certain statutory duties that must first be fulfilled by both parties.

## Statutory duties

- 14.14 The trust must consult under Section 10 of the Academies Act 2010 – see [Section 10 on Statutory Consultation](#) for full details. The trust must also have due regard to Section 149 of the Equality Act 2010.
- 14.15 Section 9 of the Academies Act 2010 requires the Secretary of State to complete an assessment of the impact the opening of the free school would have on maintained schools, academies, institutions within the further education sector and alternative provision in the area. The Secretary of State is also required under Section 149 of the Equality Act 2010 to have due regard to needs of the public sector equality duty in the opening of the free school before the funding agreement can be signed. These processes will be undertaken by your lead contact.
- 14.16 In addition to the completion of statutory duties, the Secretary of State will want to be satisfied that the school will be popular and successful upon opening. In making her decision, the Secretary of State will consider the following:
- whether the school will deliver a good or outstanding education, according to the Ofsted criteria. Have enough high quality teachers been appointed or are they likely to be appointed by the time the school opens? Is the school's leadership strong? Are all the school's policies in place?
  - whether the school has recruited enough pupils to be financially viable and if it be full within two to three years of opening. Are the admission arrangements for the school compliant with the School Admissions Code?
  - whether the board of trustees will be capable and effective. Does the proposed board include trustees with appropriate educational, financial and business experience or expertise? Are there arrangements in place to manage conflicts of interest?
  - whether the school will open on an appropriate, value for money site
  - whether the school is financially viable and efficient in its use of resources to promote pupil outcomes. The recruitment of pupils and an appropriate staffing structure are crucial for ensuring financial plans are affordable. Can the school cope with reasonable levels of change to its income and expenditure?

## How do we enter into a funding agreement – what is the process and who does what?



14.17 Previously, we have received drafts of funding agreements from trusts with suggested amendments to the model. This is no longer the case – the Secretary of State will not negotiate terms for individual projects.

- 14.18 To ensure the funding agreement is executed correctly, trusts must arrange for two trustees to sign the two copies (or one trustee and a witness). In addition, trusts should leave the documents undated when they send it to their lead contact – the department will date the document at the point it is signed and sealed.

### **How long does this process take?**

- 14.19 The timings for this process will vary, depending on individual projects. However, the stage that most often holds up the process is agreeing the final version of the funding agreement. It is for that reason that we ask trusts to focus only on the school-specific clauses (as highlighted by your lead contact). We cannot guarantee that the trust will get their signed FA on the timescale agreed if the department is not confident that the proposed school will be successful.
- 14.20 In order to speed up the process, we advise trusts to discuss with lead contacts, at an early stage in the pre-opening phase, their preferred timings for signing the funding agreement, which may include being in line with the local authority admissions process. Whilst we cannot guarantee that this will always happen, agreeing a timescale helps to focus both the trust and the lead contact on ensuring they have completed the necessary tasks in advance.

### **What are the arrangements for MATs?**

- 14.21 Multi academy trusts require different funding agreements to single academy trusts. While a single academy trust will have one funding agreement for its single free school, multi academy trusts require a master funding agreement to cover all schools within the trust, alongside supplemental funding agreements for each individual school. Model funding agreements ([single](#), [master](#) and [supplemental](#)) are available for mainstream, special, 16-19, university technical colleges, studio schools and alternative provision free schools on the gov.uk website. The master funding agreement contains general clauses (such as freedom to set the duration of the school day and year) whereas the supplemental agreement covers those clauses which are specific to the individual school.
- 14.22 If you are an existing single or multi academy trust looking to open a new free school, the multi academy trust models (master and supplemental) will apply to you. Your lead contact will be able to advise on which model will need to be used.

## 15. Ofsted inspections and registration as an independent school

### Introduction

- 15.1 This chapter summarises the process whereby proposed free schools are formally registered as independent schools based on advice from Ofsted, as well as confirming that, once open, free schools will be subject to the same inspection regime as other schools.

### Key messages

- 15.2 Your free school will have more freedoms and flexibilities than other state-funded schools but, once open, it will be held accountable in exactly the same way and subject to the same Ofsted inspection regime.
- 15.3 Your free school must undergo an Ofsted pre-registration inspection and be registered on *Get information about schools* (the department's formal register, replacement for Edubase) before it can legally open. The only situation where this may not be the case is where there is a 'material change' to the existing school. A material change could consist of changing the premises, capacity or age range of the school. As a rule, converting independent provision will not normally require a pre-registration inspection prior to becoming a free school, but do talk to your lead contact if you think your situation could be described as a 'material change'.
- 15.4 16-19 free schools are not legally independent schools, but it has been agreed with Ofsted that they will undergo the equivalent of a pre-registration inspection to ensure parity of accountability for all free schools.

### Risks

- 15.5 It is vital that you keep to the deadlines set out in this document if your school is to open on time. If in doubt, please speak to your lead contact.

### Why you need an Ofsted pre-registration inspection

- 15.6 In order to be added to the department's register of schools and legally allowed to open, the Secretary of State must decide whether or not your free school is likely to meet the relevant [Independent Schools Standards](#) outlined below once open. The Ofsted pre-registration inspection informs this decision.

- Part 2: Spiritual, moral, social, and cultural development of pupils

- Part 3: Welfare, health and safety of pupils
  - Part 4: Suitability of the proprietor and staff
  - Part 5: Premises and accommodation
  - Part 6: Provision of information for parents, carers and others
  - Part 7: Procedures for handling complaints
  - Part 8: Leadership and management
- 15.7 Please note that Part 1 of the regulations ('quality of education') does not apply to free schools in pre-opening. Your education plans and policies will be considered throughout the pre-opening phase and in particular during your [readiness to open meeting](#) with the department.
- 15.8 The pre-registration inspection is not like a full inspection, which you will be subject to once open. Instead, it seeks to establish whether the proposed school is fit to open as measured against the standards outlined above.
- 15.9 You can link to the full [Independent School Standards](#), and to the [amendments](#) that took effect on 5 January 2015.

## Registering a nursery with Ofsted

- 15.10 A nursery does not need to be registered separately with Ofsted, and will be inspected as part of the free school's pre-registration inspection, in the following circumstances:
- if it is directly provided by the school, is contained within the school's age range, and is for children aged 2 years or older, as it will be covered by the free school's own registration
  - if it is provided by a subsidiary company that is completely owned and controlled by the free school
- 15.11 If the nursery is run by a subsidiary company that is independent from the free school, or if the free school does not exercise a high level of control over it, it is likely that the subsidiary company will need to register the childcare separately. Your lead contact will advise you if this is the case.
- 15.12 Where separate registration is necessary, Ofsted will conduct a number of background checks and a separate pre-registration visit. Following this, it will be inspected under the arrangements set out in Ofsted's [early years inspection handbook](#). Ofsted will also register the nursery provision on the Early Years Register and Childcare Register.

15.13 Further detail on registering a nursery is available in the [Ofsted guidance on registering school-based childcare provision](#).

## Timing of pre-registration inspections

15.14 Your lead contact will discuss with you when your inspection should happen. Your Ofsted inspector will then contact you directly to confirm the date of inspection. You will be given notice of when your inspection will take place and you will be expected to make yourselves available on that date.

15.15 Schools that have made the most progress towards opening will be prioritised for early inspection, while projects that would benefit from having more time before their inspection will be scheduled later. It may seem advantageous to have the inspection as late as possible to give yourselves the greatest possible time to prepare. However, having an early inspection gives you more time to put right any issues identified by Ofsted before your opening day. A school cannot legally open unless it has been added to the register of schools and colleges in England.

## What you need to do ahead of the inspection

15.16 First, you'll need to fill in a copy of the [registration of independent schools form](#).

15.17 This form should be completed and returned to your lead contact, accompanied by the following documents:

- a plan showing the layout of the premises and accommodation of all buildings
- a copy of the school's written policies on:
  - preventing bullying. Changes to the Independent School Standards in 2013 mean that it is no longer prescribed that bullying policies must take into account the departmental guidance '[Safe to Learn: Embedding anti-bullying work in schools](#).' However, you may still find it useful to consider the department's advice for head teachers, staff and governing bodies
  - safeguarding and promoting the welfare of children who are pupils at the school. This should be compliant with the relevant health and safety law
  - safeguarding and promoting the health and safety of pupils on activities outside the school which has regard to the department's guidance – [Health and safety: advice for schools](#)
  - promoting good behaviour amongst pupils setting out the sanctions to be adopted in the event of pupil misbehaviour
- a copy of the school complaints procedures, as outlined in Part 7 of the Education (Independent School Standards) (England) Regulations 2010.

- evidence that the school has appropriate procedures in place for undertaking Disclosure and Barring Service (DBS) checks of staff and recording the results. All schools should have a [single central register](#) to record this information and it is the trust's responsibility to keep it up-to-date. The department's due diligence process means DBS checks will have been, or are being, undertaken on trust members and trustees. Before registration can take place, as a minimum, the chair of trustees must hold a valid DBS certificate, counter-signed by the department. We would expect DBS checks on all trustees and other members to be well underway, if not complete, ahead of registration.

15.18 The 'registration of independent schools' form and these documents should be sent in one batch to your lead contact absolutely no later than two weeks before your inspection. This is to ensure that Ofsted inspectors receive all documents sufficiently in advance of the inspection. Your lead contact will advise on the deadline and send documentation on to Ofsted. **If you do not submit the necessary documentation in time, your inspection may be delayed.**

## What happens once the forms have been sent to Ofsted

15.19 Once Ofsted receives all the relevant documents, they will consider them and report their views to the department. These comments will be taken into account in determining whether your school can be registered. However, before offering a final judgement Ofsted will need to visit the school in order to advise the department on whether the school is likely to meet the prescribed standards for registration once open.

## Compliance with the Regulatory Reform (Fire Safety) Order

15.20 You will need to be able to demonstrate that your school is meeting the requirements of the [Regulatory Reform \(Fire Safety\) Order 2005](#). Trusts should ensure that they comply with the fire safety order and registration will not be agreed until confirmation of satisfactory fire precautions is received.

15.21 Trusts should inform the local Fire and Rescue Service ahead of opening, although the fire service may decide not to inspect the premises immediately. Trusts should be aware that the fire service is not under any obligation to provide this service before the school opens, though many are still happy to do so. Ofsted will consider alternative evidence such as written confirmation from the Fire and Rescue Service that they have approved your fire risk assessment in principle or one or more of the following:

- documentation/certificate issued by an independent fire safety advisor



- confirmation that you have a fire risk assessment and are complying with the Regulatory Reform (Fire Safety) Order 2005
- a completion certificate confirming construction is in accordance with Building Control Regulations and in compliance with fire safety standards

## The day of the inspection

- 15.22 The inspector will usually spend half a day with each school and they will normally need to be met and escorted by the principal designate and/or the lead proposer. They may also need access to some office space in order to work. While in most cases it is the principal designate who talks to the inspector, it does not have to be. As long as someone else in the group can talk through the policies and plans, the principal designate does not have to be there. Ofsted will not rearrange the date of the inspection simply because the principal designate is unavailable.
- 15.23 In order to make a judgement about each of the standards, the inspector may ask to see a [number of policies](#) on the day, in addition to those submitted with the registration form. If for any reason a particular document is not available, whoever is meeting the inspector needs to be able to discuss the plans for its development. Similarly, if the work on the site has not completed, you will need to be prepared to talk to the inspector about how the building will develop. If site works are still underway and it is possible for the inspector to be shown around that would be desirable but, again, not necessary. The building work does not need to be completed ahead of the inspection but the inspector will need to see evidence that all the requirements of part 5 of the standards, relating to the premises and accommodation of the school, are being considered and will be met by the time the school opens.

## After the inspection

- 15.24 After the inspection, the inspector will produce an advice note and a checklist. The advice note is for the Secretary of State but the checklist will be sent to you by your lead contact.
- 15.25 In the event that the Ofsted checklist indicates that there are issues that must be addressed known as 'conditions of registration', you must take action to resolve these before the school can open. Your lead contact will be in touch to make sure that the conditions have been met and that you have evidence to demonstrate this.
- 15.26 In the event that Ofsted recommends that your school should not be registered, your lead contact will work with you urgently to address the issues and will arrange for the school to have a re-inspection, if necessary. After the re-inspection, the inspector will produce a second advice note and checklist.

- 15.27 It is the department, not Ofsted, which decides whether your conditions have been met. Only then can you be registered on *Get information about schools*. If you are not added to the *Get information about schools* register, you cannot legally open.
- 15.28 Ofsted is responsible for publishing the advice notices. If you are interested in seeing what an advice notice looks like, you can view [previously published advice notices](#). You should be careful about how you communicate the outcome of your inspection to your local community. These inspections are about whether or not the school is fit to open rather than providing any judgement of quality. For example, it would be misleading to say that Ofsted have visited and said that you are 'good' or 'outstanding' just because you have no conditions to satisfy.

## Get information about schools Registration

- 15.29 *Get information about schools* is the department's database of all educational establishments across England and Wales. Being entered on *Get information about schools* gets your free school its DfE number and unique reference number, which are used in a variety of circumstances to identify the school formally.
- 15.30 You must complete your *Get information about schools* form (your lead contact will provide this) and submit a copy to [GLAS.FreeSchools@education.gov.uk](mailto:GLAS.FreeSchools@education.gov.uk). This form is different from the one available on the independent schools part of the gov.uk website, because the process involved is slightly different. The *Get information about schools* form can be submitted for processing at any time during the pre-opening period, but you should aim to ensure that it is submitted no later than 5 months before your opening date. You will need a landline telephone number to put on this form (others are not accepted on the *Get information about schools* system). If you do not have one for the school, you should use another – but remember to change it to the school's number as soon as you have Secure Access login details.
- 15.31 Once the form has been processed, your school will initially be registered as 'pending approval', which means that although your school will have a *Get information about schools* profile, it will not be searchable by the public. After your school has completed the initial *Get information about schools* registration, you will then be issued with your DfE number and unique reference number.
- 15.32 Please note that your school will not be publically searchable until your school's status has been changed to 'proposed to open' (the final stage of the *Get information about schools* registration process). This will be done when you have a funding agreement in place, any pre-opening ROM actions have been addressed (see below), you have successfully completed your Ofsted pre-registration inspection, and your school has been assessed as likely to meet all the relevant Independent School Standards when it opens.

- 15.33 Once your lead contact has confirmed that your school's status has changed on *Get information about schools*, you will need to contact Secure Access in order to gain login details for *Get information about schools* via [SA Service Request form](#). Secure Access is the department's portal for systems such as *COLLECT*, *School to School*, *Key to Success*, *ESFA managed Information Exchange* and since September 2017, *Get information about schools*. The Secure Access Portal allows registered users access to the department's systems. Access to systems is granted on a user-by-user basis and only those systems that a user has permission to access will be displayed.
- 15.34 Academies (including free schools) and trust accounts can have up to twenty user accounts and two approver accounts per organisation. The department will work with the secure access team to set up the approver account, but the user accounts must be set up by the approver at the organisation.
- 15.35 The approver can create accounts for other members of staff and add services to accounts such as *COLLECT*. They also archive accounts when they are no longer in use. It is their responsibility and decision as to who they add to the account. A full guide for the approver can be found [here](#).
- 15.36 Once registration is complete, it is important that someone at the school takes responsibility for keeping your *Get information about schools* record up-to-date – the department will not do this for you. If you do not confirm your school information on *Get information about schools* is correct every 90 days, then access to all other services such as *COLLECT* will be suspended until you do.

## Inspections once open

- 15.37 Once open, mainstream, alternative provision and special free schools are inspected under the same arrangements that apply to maintained schools, and 16-19 free schools are inspected under the same arrangements that apply to other post-16 providers. The first full inspection of a free school normally takes place during the third year of opening (for schools with boarding provision, this will be the first year). Full inspections are conducted under Ofsted's Common Inspection Framework (CIF) for education, skills and early years. Ofsted publishes a *School Inspection Handbook* (covering section 5 inspections) and a *Further Education & Skills Inspection Handbook*, which provide more detailed information about the inspection process and criteria. Further information is available on [Ofsted's website](#).
- 15.38 Ahead of a free school's first Ofsted inspection, the department's EAs will carry out monitoring visits, usually in their first, fourth and sixth terms of opening.

- 15.39 The objectives of the EA visits are to ensure that schools are satisfactorily addressing risks identified at the ROM, providing a high standard of education, likely to achieve a rating of good or better in their first Ofsted inspection, and to assure the department that there are no other issues that need to be addressed.
- 15.40 Monitoring will assess against the categories set out in the new CIF. EAs will make contact towards the end of September to arrange visits. The department may ask EAs to conduct follow-up monitoring visits should schools require additional support in their first year.
- 15.41 Visits are supportive but also provide challenge, to highlight areas schools should focus on ahead of their first Ofsted inspection. In addition to monitoring visits, many open free schools have found it useful to buy in support to undertake a trial run inspection ahead of the real thing to identify any outstanding issues. Many providers offer this service and employ ex-HMI to deliver it. These external assurance exercises will help validate your school's self-evaluations and inform school improvement plans ahead of your first Ofsted inspection.

## School-to-school support

- 15.42 One of the most effective ways of achieving school improvement is by working with other schools. The National College for Teaching and Leadership has provided a guide that summarises the school-to-school support options available for school leaders and governors. This includes teaching schools, which are outstanding schools who work with other schools in their local area to provide excellent support, and training and development to both new and experienced school staff. Further information can be found on the [gov.uk website](#)

## LINKS TO FURTHER INFORMATION

- [View Table 13 Ofsted inspections and school registration: checklist of activities.](#)
- [Independent School Standards](#)
- [Amendment to independent school standards](#)
- [Advice on bullying for head teachers, staff and governing bodies](#)
- [Safeguarding Children and Safer Recruitment in Education](#)
- [Health and Safety of Pupils on Educational Visits](#)
- [Ofsted advice notes](#)
- [Ofsted website](#)

## 16. The readiness to open meeting (ROM)

### Introduction

16.1 This chapter summarises the process of preparing for and successfully managing the ‘readiness to open’ meeting’ (ROM) in the run-up to opening your school.

### Key messages

16.2 ROMs will normally take place before the end of June ahead of opening in September. ROMs are formal meetings between the department and the trust designed to achieve the following:

- identify issues and risks that might prevent the school from opening with viable pupil numbers and robust finances and/or getting a ‘good’ or better judgement at the first Ofsted inspection
- identify actions needed to mitigate risks and/or address issues
- where necessary, enable ministers to take decisive action (such as to defer) before the opening date

16.3 Education and viability will be the key focus of the ROM. The department will use the meeting to make a judgement on how confident it is that the proposer group will open a successful school.

16.4 Attendees from the proposer group should be:

- the chair of trustees (we suggest both the local governing chair and the chair of the board from the multi academy trust should attend where appropriate)
- the principal designate (head of school and/or the executive head may also attend where appropriate)
- any other person who can provide information useful to the meeting, for example the chair of finance committee, or business manager
- only those who hold a governance or leadership role should attend, with a maximum of five external attendees overall

### Summary of key tasks

16.5 In most instances, the ROM will take place in an office of the department, and will be chaired by a senior department official. Given the focus on education at the ROM, a department education adviser will also normally attend. The principal

designate will be required to complete a risk report and return it to the lead contact at least two weeks prior to the ROM. The report will do the following:

- outline any risks or issues and the actions needed to address those issues
- identify areas that require further discussion

## Risks

- 16.6 Those attending from the proposer group **must** include the chair of governors (both the local governor chair and MAT chair should attend where appropriate) and the principal designate (the executive head can also attend where appropriate). **We will cancel the meeting unless both the chair of governors and the principal designate are able to attend, or if the information we need is returned too late for us to review before the meeting.** You may also want to bring any other person who can provide information useful to meeting, such as the chair of the finance committee or the business manager.

## Working with the department

- 16.7 Your lead contact will discuss the format and aims of the ROM with you in advance of the meeting. There will also be an opportunity to consider the content of the risk report to be completed by the principal designate. Your lead contact will inform you of the venue of the ROM and agree an appropriate date.
- 16.8 The ROM will be chaired by a senior department official and will be attended by your education adviser, lead contact and, where appropriate, representative(s) from ESFA. Department representatives will ask questions about progress, risks and issues in key areas of the project and agree with you what actions might be needed for each relevant issue.

## LINKS TO FURTHER INFORMATION

- [View Table 14 Readiness to open: checklist of activities](#)

## 17. Once your school is open

### The final stage of the pre-opening period

- 17.1 The final stage of the pre-opening phase is to prepare for opening, which includes the hand-over of your free school project from the department's free schools group (FSG) to the relevant Regional School Commissioner (RSC), to monitor your educational performance, and the ESFA, who will monitor your compliance with your funding agreement.
- 17.2 Your lead contact will ensure that the RSC and ESFA are fully briefed on your project so they know what challenges you may experience in your early days of opening. Once your project is handed over to ESFA, it is important that you communicate with them and not your original lead contact.
- 17.3 Where it will be helpful, a named contact from ESFA will arrange an initial meeting with you early in the autumn term of opening to visit your free school and develop an understanding of the school's vision. The expectation is that once your school is open, you have the freedom, autonomy and responsibility to run it, within the expectations and requirements set out in the Academies Financial Handbook and your funding agreement. You should call on ESFA only if issues arise on which you need specific advice or guidance. Details of how to contact ESFA can be found below.

### What does ESFA do?

- 17.4 The role of ESFA is to calculate and pay revenue and capital funding, as well as seek assurance over the use of public funds from academies of all types, including free schools.
- 17.5 ESFA expects free schools to make the most effective use of their financial freedoms to raise educational standards, operating full accountability for how they spend tax-payers' money. Schools are asked to provide financial returns so ESFA can provide assurance that this is the case and that free schools are meeting the terms of their funding agreements.
- 17.6 ESFA supports a free school's compliance with its funding agreement by responding to any requests that you may make of the Secretary of State as required by the funding agreement. This may include things such as approval to enter into a lease or to dispose of land.



## How will ESFA work with you?

17.7 ESFA has published a customer charter that sets out what all free schools and academies can expect in terms of service delivery standards. The paragraphs below are a summary of ESFA's role and service in relation to free schools.

17.8 You can get information and support from ESFA in these ways:

- the gov.uk website has [information about ESFA](#) for all ESFA customers and a specific area for academies and free schools funding, payments and compliance
- the [Academies Financial Handbook](#), information about school funding reform, [schools forums operational and good practice guide](#), the [Priority Schools Building Programme](#) and the [School Admissions Code](#) are a few of the useful documents available on the website
- every week, ESFA publishes an [e-bulletin](#) that contains information for academies and free schools. It highlights key developments and changes in policies and procedures and events. It is often used to remind you of returns that are due
- [ESFA Information Exchange](#) is a secure website and enables free schools and academies to exchange documents securely, find answers to common questions, access a calendar of key business cycle dates and deadlines as well as accessing accurate financial returns and other transactions

17.9 If you cannot find the information you need through the above, you can complete an [enquiry form](#). ESFA aims to answer questions within 48 hours – if they cannot do that, they will tell you and keep you informed of progress.

## Regional Schools Commissioners

17.10 As the number of academies and free schools continues to grow, we have considered how the system should respond, to ensure that decisions about the academy school system (including free schools) should be taken closer to the areas concerned, and that education leaders should have a stronger influence on those decisions. The best people to do this are outstanding leaders and heads in each region. Local heads know their areas best and know what is right for academies and free schools locally.

17.11 In September 2014, the department appointed eight [Regional Schools Commissioners \(RSCs\)](#) across eight regions of the country (see table below). The RSCs report to the national Schools Commissioner.

RSC	Region (office location)
Janet Renou	North (Darlington)



<b>RSC</b>	<b>Region (office location)</b>
Vicky Beer	Lancashire and West Yorkshire (Manchester)
John Edwards	East Midlands and Humber (Sheffield)
Christine Quinn	West Midlands (Coventry)
Sue Baldwin	East of England and North East London (Cambridge)
Martin Post	South Central and North West London (Hemel Hempstead)
Lisa Mannall	South West (Bristol)
Dominic Herrington	South East and South London (Croydon)

17.12 A head teacher board of six to eight elected, appointed or co-opted members supports each RSC. Members are academy head teachers and professional leaders. They are key to the development of a self-improving school system.

17.13 RSCs take decisions regarding academies and free schools in their regions in the name of the Secretary of State. All decisions are taken in line with the legislation and our published criteria. Further information on RSCs can be found [here](#).

17.14 RSCs' general responsibilities include:

- monitoring the performance of the academies, free schools, university technical colleges (UTCs) and studio schools in their area
- taking action when an academy, free school, university technical college (UTC) or studio school is underperforming
- taking decisions on the development of new academies
- making recommendations to ministers about free school applications and opening
- encouraging organisations to become academy sponsors, or to establish free schools, approving sponsor applications and helping to build the capacity and capability of existing sponsors within their area
- approving changes to open academies, such as changes to age ranges, mergers between academies and changes to multi academy trust arrangements

17.15 Since 1 July 2015, RSCs have also taken on responsibility for addressing underperformance in local authority maintained schools through sponsored academy arrangements.

17.16 RSCs' key responsibilities in relation to free schools are:

- advising on which free school applications (including mainstream, 16-19, special and alternative provision) to approve
- advising on whether to cancel, defer or enter into funding agreements with free school projects in pre-opening
- determining the nature of the pre-emptive action that takes place with free schools which are judged by EAs as at risk of receiving a 'requires improvement' or 'inadequate' judgement in their first Ofsted
- tackling educational underperformance in open free schools, UTCs and studio schools

## Key tasks in the early days of opening

- if contacted, update ESFA on pupil recruitment numbers and any early issues
- prepare for a department education adviser visit in your first term of opening
- ensure that the academy trust has approved an annual budget for the first year of operation and submitted this to ESFA in accordance with the published timetable
- ensure that the academy trust has implemented the requirements of the [Academies Financial Handbook](#)

## LINKS TO FURTHER INFORMATION

- [View Table 15 Handover to ESFA: checklist of activities](#)
- [ESFA website](#)
- [Academies Financial Handbook](#)
- [Schools and college funding and finance](#)
- [Priority Schools Building Programme](#)
- [ESFA e-bulletins](#)
- [Schools financial health and efficiency website](#)

## 18. Freedom of Information (FOI)

- 18.1 Free schools are subject to Freedom of Information (FOI) requests as trusts are public authorities under the Freedom of Information Act (2000) in their own right. The Freedom of Information Act 2000 provides public access to information held by public authorities. It does this in two ways:
- public authorities are obliged to publish certain information about their activities
  - members of the public are entitled to request information from public authorities
- 18.2 The Act does not give people access to their own personal data (information about themselves) such as their health records or credit reference file. If a member of the public wants to see information that a public authority holds about them, they should make a subject access request under the Data Protection Act 1998. However, if you receive a FOI request where the information asked for is the requester's personal data, you should inform the requester that the information is exempt under the FOI Act, but at the same time deal with it as a subject access request under the Data Protection Act.

### Summary of the key tasks

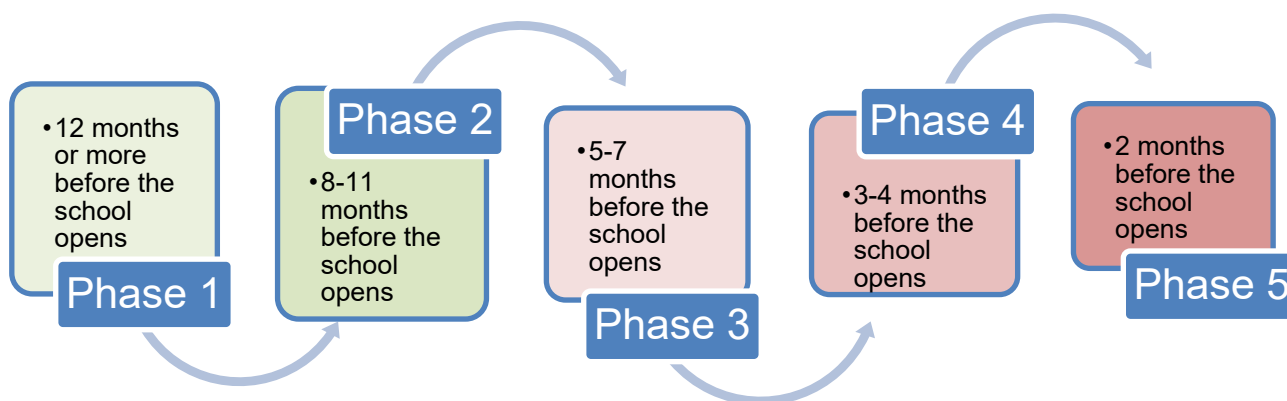
- 18.3 The department cannot advise free schools on how to answer a FOI request. However, if you receive a request and are unsure how to deal with it, you should ask your ESFA Academy Liaison Officer, in the first instance, as they may be able to help you understand what is being asked of you and can point you in the direction of useful resources.
- 18.4 From time to time, the department is made aware of 'round robin' FOI requests that are being sent to every open free school. If you have received such a request, it would be helpful to let the department know.

### Other helpful sources of information

- 18.5 It may be helpful, when considering how best to answer a FOI request, to look at the [Information Commissioner's Office website](#). Compliance with the Freedom of Information Act 2000 is overseen by the Information Commissioner's office (ICO), the independent body with responsibility for the regulation of the Freedom of Information Act 2000, the The Environmental Information Regulations 2004 and the Data Protection Act 1998. If you receive requests for information that is already publically available, you should direct the requester to where the information is published. The department publishes information about free schools on the gov.uk website. You can find a collection of information it publishes [here](#). You can also find free school revenue costs [here](#) and capital costs [here](#).

## Annex A: Project task checklists

The checklists below provide a summary of the tasks that you will need to complete during the pre-opening phase. They should be used in conjunction with the information in the relevant chapters, to satisfy the Secretary of State that your school will open on time, with a viable number of pupils, and provide a good standard of education. The diagram below outlines the timescales referred to in the checklists.



**Table 1 Managing your project: checklist of activities**

Activities to complete	Who has responsibility	Recommended timescales to complete
Review the capacity within your group to ensure there is sufficient expertise with the right skills sets, capability and time commitment to deliver your school project successfully. Submit governance plan to lead contact.	trust	Phase 1
Ensure you have a robust project plan in place with key project milestones and sufficient resources allocated to manage all the tasks in pre-opening, including expertise to manage your project plan.	trust	
Ensure you have a marketing plan in place so that marketing is a continuous priority process.	trust	
Kick-off meeting with trust.	lead contact	
Principal designate recruitment – draw up timeline and set interview dates. If benchmarking is necessary, liaise with EA to ensure they feed in and can scrutinise.	trust	

**Table 2 Procurement and additional support: checklist of activities**

Activities to complete	Who has responsibility	Recommended timescales to complete
Plan pre-opening expenditure, agree approach to procurement and set up arrangements to manage the budget.	trust	Phase 1
Decide where the trust will need to buy in services and support and plan the appropriate procurement to ensure suppliers/goods are in place as and when required.	trust	

**Table 3 Governance: checklist of activities**

Activities to complete	Who has responsibility	Recommended timescales to complete
To have established a company limited by guarantee (the trust) using the department's model memorandum and articles of association. Set governing body size.	trust	Pre-application
Pen portraits on new trustees. Procedures in place to identify and manage conflicts of interest.	trust	Phase 1
To have in place plans for the structure of your governing body and plans for how you will source, recruit and train your trustees.	trust	Phase 1
To have recruited the chair and be on track to recruit remaining trustees and support staff. Workable plans in place for recruiting the remainder, and any training.	trust	Phase 3
Trustee recruitment complete and work completed/underway on key protocols and documents for term one.	trust/chair of trustees	Phase 4

**Table 4 Due diligence: checklist of activities**

Activities to complete	Who has responsibility	Recommended timescales to complete
Ensure you inform the department of all new members and trustees and have sent in all completed Section I forms to the Due Diligence Team.	trust	Whenever a new member or trustee is appointed
Ensure that all enhanced DBS checks have been commissioned for the trust.	trust	Phase 1

**Table 5 Funding checklist**

Activities to complete	Who has responsibility	Recommended timescales to complete
Issue PDG agreement.	lead contact	Phase 1
Plan pre-opening expenditure, open bank account (if this does not already exist), agree approach to procurement and set up arrangements to manage the budget and comply with the terms of the grant agreement.	trust	
Sign and return PDG agreement.	trust	
Submit plans for expenditure of PDG throughout pre-opening to your lead contact as defined in your grant agreement.	trust	Ongoing
Continue to develop school finance plan as project develops and review staffing structure.	trust	Ongoing
Submit plans for expenditure of PDG throughout pre-opening to your lead contact, as defined in your grant agreement.	trust	Phase 2
Assess financial plan and planned governance arrangements for the school.	lead contact	Phase 3
Issue indicative funding letter based on approved financial plan and agreed estimate of pupil numbers.	ESFA (revenue)	Phase 4

**Table 6 Site and buildings: checklist of activities**

Activities to complete	Who has responsibility	Recommended timescales to complete
<b>Arrange site kick-off meeting.</b>	lead contact	Phase 1
<b>Search for a site.</b>	ESFA/LocatED	Phase 1
Confirm a suitable site has been secured that can be delivered in the timescales and represents value for money.	ESFA/LocatED	Phase 1
Checkpoint meeting to discuss confirmation of the provisional opening date.	ESFA/Lead contact	Phase 1
Confirm technical feasibility of site, including planning.	ESFA	Phase 2
Procure construction works and ICT.	ESFA	Phase 3
Build or refurbish school.	ESFA	Phase 3
Building works complete and site handed over.	ESFA	Phase 5

**Table 7 Admissions: checklist of activities**

Activities to complete	Who has responsibility	Recommended timescales to complete
Trust develops plans for admission arrangements.	trust	Phase 1
Submit admission arrangements to lead contact. These should include the timeline and process for accepting applications and making offers.	trust	Phase 1
Trust to work with lead contact and admissions team to agree admission arrangements for the free school.	trust/lead contact	Phase 1
Develop marketing plan for discussion.	trust/lead contact	Phase 1

<b>Activities to complete</b>	<b>Who has responsibility</b>	<b>Recommended timescales to complete</b>
Include draft admissions policy in S10 consultation.	trust	Phase 2 (to link with S10 consultation timeline)
Monitor pupil recruitment, providing frequent updates with supporting evidence to your lead contact and consider how this relates to the financial and educational viability of the free school.	trust/lead contact	On-going
Make offers to pupils in line with published admission arrangements. When offering places, free schools without a signed funding agreement must make it clear that the offer is conditional on the funding agreement being signed.	trust	First week of March – secondary national offer day Mid-April – primary national offer day
Ensure an independent appeals panel is in place	trust	Before the offer of places

**Table 8 Faith: checklist of activities**

<b>Activities to complete</b>	<b>Who has responsibility</b>	<b>Recommended timescales to complete</b>
Identify a religious authority for admissions.	trust	Phase 1
Identify a religious authority for inspections.	trust	
Submit FSRDApp1 form to the department.	trust	Phase 1



**Table 9 Statutory consultation: checklist of activities**

Activities to complete	Who has responsibility	Recommended timescales to complete
Develop clear plans for carrying out your consultation	trust	Phase 1
Launch your consultation in line with Section 10 of the Academies Act 2010.	trust	Phase 2
Include evidence from the Section 10 consultation in the assessment of the impact that opening the free school will have on other state-funded educational institutions in the local area.	lead contact	Phase 2
Consider the responses to your consultation and whether you need to make any changes or additions to the plans for your school.	trust	Phase 2
Provide a report of the consultation, including key findings, to the department.	trust	Phase 3

**Table 10 Equalities duty: checklist of activities**

Activities to complete	Who has responsibility	Recommended timescales to complete
Review your on-going commitment to your equalities duty for all your plans and policies throughout pre-opening.	trust	On-going

**Table 11 Staffing, education plans and policies: checklist of activities**

Activities to complete	Who has responsibility	Recommended timescales to complete
Discuss your proposed staffing structure with the department.	trust	Phase 1
Consider how you will meet your statutory duties in relation to the Equalities Act through recruitment material for staff.	trust	
Begin the recruitment process for your principal designate.	trust	
Include the recruitment of staff and the development of your educational plans and policies in your project plan.	trust	
Recruitment of essential senior staff begins.	trust	Phase 2
Begin drafting all the staff policies required for recruitment of staff.	trust	
Single Central Register (SCR) set up.	trust	
Staffing structure finalised and financially viable given likely number of pupils and curriculum offer.	trust	Phase 3
Key appointments made and minimum staff appointed, DBS checks, contracts and pension arrangements underway.	trust	
Have in place all education plans and policies that are required for your Ofsted pre-registration inspection (not applicable to registered independent schools which are converting).	trust	
Produce curriculum plan.	principal designate or education expert	
Produce three-year development plan/ <a href="#">Education Brief</a> (the overarching plan to which all other policies and plans relate).	principal designate or education expert	Phase 4

Activities to complete	Who has responsibility	Recommended timescales to complete
Schemes of work developed that cover at least the first year of opening.	principal designate other teaching staff in post if applicable	
Pupil level assessment and accreditation plans in place.	principal designate	
All <a href="#">policies the trust has a statutory duty to produce</a> are in place.	trust	
Plans for pupil induction in place.	principal designate	
Begin staff induction and training.	trust	

**Table 12 Funding agreement: checklist of activities**

Activities to complete	Who has responsibility	Recommended timescales to complete
Complete your statutory consultation and submit report to your lead contact.	trust	Phase 2
Meet your requirements, as a public authority, under section 149 of the Equality Act 2010.	trust	
Have appointed sufficient, and appropriate, staff to start in September of opening (including PD).	trust	
Secure enough pupils (with conditional offers) to meet your PAN.	trust	
Submit your financial plans to your lead contact for approval.	trust	

**Table 13 Ofsted inspections and school registration: checklist of activities**

Activities to complete	Who has responsibility	Recommended timescales to complete
Inform the trust when their inspection will take place.	Ofsted	Phase 3
Submit the completed Ofsted registration form and all required documentation to Ofsted.	trust	
Submit the completed <i>Get information about schools</i> form to the department.	trust	
Send the Ofsted pre-registration inspection checklist to the trust.	lead contact	Phase 5
Address any conditions of registration identified by Ofsted as per the checklist.	trust	

**Table 14 Readiness to open: checklist of activities**

Activities to complete	Who has responsibility	Recommended timescales to complete
Agree date/venue of ROM.	lead contact / trust	At least one month prior to the ROM (Phase 4)
Discussion/briefing on ROM.	lead contact / trust	
Completion of principal designate Risk Report.	principal designate	At least two weeks prior to the ROM (Phase 4)
ROM meeting.	principal designate, lead proposer, chair of trustees, lead contact and ESFA.	Phase 4
ROM risk register and key actions document.	lead contact	Two weeks after ROM (Phase 4)

**Table 15 Handover to ESFA: checklist of activities**

Activities to complete	Who has responsibility	Recommended timescales to complete
Complete actions generated from the ROM.	trust	Phase 4
Meet with ESFA representative as required.	trust/ESFA	Phase 4
Ensure your free school is prepared for an education adviser visit during the first term.	trust	First Term
Sign up to the ESFA Information Exchange.	trust	By the first week of opening
Complete and submit your land and building valuation information to ESFA.	trust	Within six weeks of opening
Ensure that the requirements of the Academies Financial Handbook are in place when the school opens, including formation of a finance committee, the appointment of external auditors, responsible officer and accounting officer.	trust	By opening
Approval and submission to ESFA of the trust's annual budget forecast for the first year of opening.	trust	Early autumn (year of opening)
Completion and submission to ESFA of academies' financial management and governance self-assessment.	trust	First term

## Annex B: Memorandum and Articles of Association – confirmation of model articles checklist

The department's model articles have been designed to follow best practice in corporate, charitable and school governance. Trusts are therefore expected to adopt our model articles to establish their academy trust.

Trust Articles of Association (using the model document in Word, with tracked changes) should be submitted, with this completed form, to your lead contact. Your lead contact will need to be satisfied that they are in line with our model before recommending that ministers enter into a funding agreement to open your free school.

Free school trust			
Free school name			
Model articles used	Yes/No*		
Date articles downloaded (from gov.uk)			
Please sign below to confirm that no changes have been made to the model clauses over and above those indicated as required within the model.			
Signature of Chair of Trustees		Date	
Signature of Senior Executive Leader		Date	

\*please delete as appropriate.

## Annex C: Governance plan – checklist for trusts

All proposer groups **must complete** the checklist below before submitting governance plans to the department.

The checklist revolves around the six features of effective governance highlighted in the [Governance Handbook and Competency Framework](#) and highlights areas we commonly see incorrectly completed or overlooked resulting in delays in clearing plans. For each item, please reference the page number in which the information can be found. If you have answered 'No' to any of the questions, please include a brief explanation in the comments section.

The checklist should be signed by the lead proposer or chair of trustees to confirm their agreement that each item on the checklist has been addressed in the governance plan.

Strategic Leadership			
	Completed	Page no.	Comments
Does the plan clearly and concisely outline the vision and ethos of the academy trust?			
Does the plan include processes to monitor and review progress against agreed strategic goals periodically and as necessary?  <i>(This should include processes to monitor progress at key growth stages the trust has identified or if the performance drops)</i>			
Does the plan include mechanisms for enabling the board to listen, understand and respond to the voices of parents/carers, pupils, staff, local communities and employers?			
Does the plan include procedures for the board to set and manage risk appetite?  <i>(This is the amount and type of risk that trusts are willing to take in order to meet objectives. Risks should be aligned with the trust's strategic priorities and improvement plans, intervention strategies should be in place and there should be plans to embed risk management at every layer of governance.)</i>			



Accountability			
	Completed	Page no.	Comments
Does the plan state how trustees will ensure they know their school's cohort?			
Does the plan set out <u>how</u> the board (and LGB, if applicable) will be involved in developing the strategic academic priorities for the school, in setting associated targets and in monitoring performance, in terms of both attainment and pupil progress?			
Does the plan state how the board (and LGB, if applicable) will monitor performance of the school? <i>(Does this plan outline the range of sources the board will consider to assess school performance?)</i>			
Does the plan have clear processes for overseeing and monitoring school improvement and providing constructive challenge to school leaders?			
Does the plan state what intervention will be used if improvement at the school is not progressing according to plan? <i>(The plan should outline how the board will ensure that senior leaders are challenged to improve the education of pupils)</i>			
Does the plan include a clear annual process for performance managing the head teacher? <i>(Does this process build in external challenge?)</i>			
Does the plan provide scope for the effective oversight of all other employees and the framework for their pay and conditions?			
Does the plan include details of a regular cycle of meetings and appropriate processes to support business and financial planning?			
Does the plan explain how governors will monitor and challenge how the trust is managing within its available resources and ensuring regularity, propriety and value for money?			

People			
	Completed	Page no.	Comments
Does the plan state how many members there will be?			
Does the plan include a biography for each member that clearly states how their skills and experience makes them suitable for their role?			
Does the plan state how many trustees there will be?  <i>(If there will be more than 12 trustees, does the plan include a clear justification for this number?)</i>  <i>(Note: trusts are still required to reserve 2 places at either board level or on every LGB for parent governors)</i>			
Does the plan state whether a chair of trustees and professional clerk are in place?  <i>(If not, does the plan state how and by when the trust will recruit a chair of trustees and professional clerk?)</i>			
What is the split between members and trustees and is any overlap clearly articulated?  <i>(The majority of members must be independent of the trustees. Trusts should also confirm whether there are family relationships between members and trustees).</i>			
Does the plan include a biography for each trustee, including the chair of trustees that clearly states how their skills and experience makes them suitable for their role?  <i>(The trust should have all the necessary skills, as outlined in the <a href="#">Competency Framework for Governance</a>).</i>			

	Completed	Page no.	Comments
<p>Does the plan include a clear succession plan for trustees?</p> <p><i>(In normal circumstances, no trustee should serve longer than two terms in office and the chair should be replaced every six years)</i></p>			
<p>Does the plan include timed plans for when trustees will be recruited to any remaining positions?</p>			
<p>Does the plan consider what training the board/ individual trustees/LGB (if applicable) will need, both in preparation for the school's opening and on an ongoing basis?</p>			
<p>Does the plan address how this training will be provided, whether external specialists will be involved and what are the timeframes?</p> <p><i>(The trust may wish to consider the training and support available via their local authority or the <a href="#">NGA training packages</a>)</i></p>			
<p>Does the plan include a clear process for the induction of future trustees/governors?</p>			
<p>Does the plan include any plans for training/support for the AO and CFO (business manager/finance director) roles?</p> <p><i>(This is particularly important if the individuals appointed are new to the role)</i></p>			
<p>Does the plan state how many governors there will be on the LGB (if applicable)? Is a chair of governors in place?</p> <p><i>(If there will be more than 10 governors, does the plan include a clear justification for this number?)</i></p>			

Structures			
	Completed	Page no.	Comments
<p>Does the plan clearly outline how the board/committees will be structured?</p> <p><i>(The structure should reflect the scale and structure of the organisation as well as the key functions expected of a governing body)</i></p>			
<p>Does the plan include processes for ensuring appropriate communication between all levels and structures of governance and to pupils/students, parents/carers, staff and communities to ensure transparency of decision-making?</p>			
<p>For multi academy trusts, will the board of trustees manage the schools in the trust or will schools have local governing bodies (LGBs)?</p> <p><i>(If the trust does not intend to have LGBs, does the board of trustees have the capacity to provide the necessary challenge and support to all schools within the MAT?)</i></p>			
<p>Does the plan clearly explain at which level the responsibilities of the board will be executed or delegated to the LGBs and committees or individuals?</p> <p><i>(For instance: in determining each schools' vision, ethos and strategic direction; recruiting each school's principal; the performance management of each school's principal; determination of the HR policy and practice; oversight of each school's budget; assessment of risks for each school)</i></p> <p>Once finalised, the scheme of delegation should be published on the school's website.</p>			
<p>Does the plan clearly state what structures are in place for LGBs to escalate issues to the Board?</p>			

	Completed	Page no.	Comments
Does the plan include processes for ensuring appropriate communication between all levels and structures of governance and to pupils/students, parents/carers, staff and communities to ensure transparency of decision-making?			
Does the plan include a developed terms of reference for committees?			
Does the plan clearly explain at which level the responsibilities of the board will be executed or delegated to committees or individuals?			
Does the plan set out how frequently committees/LGBs will meet and an overarching work-plan for the academic year?  <i>(The work plan should be focused on school improvement and take account of the key areas of influence for the board)</i>			

### Compliance

Does the plan clearly set out how the board/LGB will execute its responsibilities around safeguarding, SEND, inclusion and Prevent?			
Does the plan set out how the board will monitor the impact of the pupil premium and other targeted funding streams?			

### Evaluation

Does the plan include a skills audit that clearly identifies any skill gaps in the existing trustees?  <i>(There are a number of resources available online that trusts may wish use to identify the skills gaps in their governing body including the National Governors Association (NGA) <a href="#">skills audit and matrix</a>)</i>			
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	Completed	Page no.	Comments
Does the plan state how skills gaps will be addressed through the recruitment of additional trustees or training?			
Does the plan include a clear process for how the board will manage their own performance (both individually and as a whole) and how the board will demonstrate its impact at the school?  <i>(This should include commissioning external reviews of board effectiveness, particularly at key growth or transition points, to gain an independent expert assessment of strengths and areas for development)</i>			
For single academy trusts, does the plan include a clear process for <u>how</u> the board the measure the impact of the LGB?  <i>(How will the LGB monitor its own impact?)</i>			
For single academy trusts, does the plan consider what changes would be required in the governance arrangements if the trust were to transition to become a MAT?			

Financial governance			
Does the plan set out how trustees have ensured they understand their responsibilities and the legal framework in which the trust operates?  <i>(Legal framework: Articles, Funding Agreement, Academies Financial Handbook, Charity Commission and company law. For example, has the trust looked at the financial management and governance questions newly opened academies have to answer?)</i>			

	Completed	Page no.	Comments
Does the plan clearly explain who the trust's Accounting Officer (AO) is and whether the individual understands the duties and responsibilities of the role/or set out the trust's plans to ensure they appoint an appropriate AO?			
Does the plan state who will be the lead finance governor(s) and explain their suitability for the role?			
Does the plan set out how the trust ensures appropriate oversight of financial transactions?  <i>(For example, by having all the trust's property under the control of trustees; measures in place to prevent losses or misuse; having bank accounts and a financial system in place operated by more than one person; keeping and maintaining full and accurate accounting records; and preparing accruals accounts, giving a true and fair view of the trust's use of resources, in accordance with existing accounting standards)</i>			
Does the plan confirm the trust has a written scheme of delegation of financial powers that maintains robust internal control arrangements?  <i>(For example, management checks/approval arrangements, financial regulations/procedures manual)</i>			
Does the trust have clear plans for assurance functions including the appointment of external auditors?			
Does the plan show how the Chief Financial Officer will be held to account by the governing body?			

	Completed	Page no.	Comments
<p>Does the plan set out how the trust has ensured they understand procurement rules and regulations and have appropriate controls in place - including connected party transactions and register of business interest?</p> <p><i>(For example, are trustees providing any services/goods and, if so, are procurement rules being followed carefully?)</i></p>			
<p>Does the plan set out how the trust has ensured they understand procurement rules and regulations and have appropriate controls in place, including connected party transactions and register of business interests?</p> <p><i>(For example, are any services/goods being provided by trustees and, if so, are procurement rules being followed carefully?)</i></p>			

#### Transition from pre-opening to open

Does the plan clearly outline the arrangements for when the board and LGB (if applicable) will start operating?			
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Signed (by lead proposer or chair of trustees):

Name:

Date:



## Annex D: Section 10 Consultation – checklist for all trusts

Below is a checklist that should be sent to your project's lead contact when submitting your final consultation report. The questions asked are just a sample of the key issues to address. Your lead contact will consider your entire report and provide feedback as necessary.

Questions	Responses
Over what period did your consultation take place?	[Exact dates]
How did you disseminate your consultation materials? (online platform, emails, questionnaires, leaflets, letters inviting responses, events)	[Explanation]
List the respondents and stakeholders you proactively engaged with in your consultation process (such as local schools, local authorities, parents, community groups and leaders, local residents, prospective students)	<ul style="list-style-type: none"> <li>• [Name]</li> <li>• [Name]</li> <li>• [Name]</li> <li>• [Name]</li> <li>• [Name]</li> <li>• [Name]</li> <li>• [Name]</li> </ul>
What information was made available to consultees? Which school policies did you share (such as admissions, SEN)?	[Explanation]
What information did you provide about the school's site?	[Explanation]
Did your consultation specifically ask respondents to confirm whether they agreed that the Secretary of State should enter into a funding agreement with your trust to open your new free school?	[Yes/No]
How many respondents in total did you get to this specific question?	[Number]
How many of the respondents agreed that the secretary of State should enter into a funding agreement?	[Number]
What issues were raised by respondents about any part of your consultation?	[Explanation]
What is the trust's response to each of these issues?	[Explanation]

Signed (by lead proposer or chair of trustees):

Name:

Date:

## **Annex E: What should an Education Brief contain?**

The Education Brief is one document that contains all your school's policies and strategies. This will make it easy for everyone involved in the organisation to understand the vision for your new school, how it will operate, the educational programme that the school will deliver, goals the school wishes to achieve and its ambitions for the future. The Education Brief should describe the following contents:

### **1. Vision, ethos and values**

- Context of the new school

- Mission Statement

- Principles – the key values upon which the school will be based

### **2. School development planning cycle**

- Quality assurance and accountability system – how the school will quality assure its practices and outcomes

- Review and evaluation process – internal and external

### **3. Strategic objectives**

### **4. Key performance indicators and targets for at least the opening year**

### **5. Leadership and Governance**

- SLT structure, roles, responsibilities and organisation chart

- Structure of the governing body, sub-committees, roles and responsibilities

### **6. Curriculum strategy**

- Principles upon which the curriculum is based

- How you will ensure the affordability and value of your curriculum (including key financial health and efficiency metrics)

- Curriculum programme – the number of lessons scheduled for each subject and/or programme for KS1, KS2, KS3, KS4 and Post 16 (as appropriate)

- Provision for EYFS if appropriate including provision for play

- Literacy and numeracy provision – including provision for literacy recovery

- Enrichment programme

- ICT to improve learning

- Provision for SEN(D), G&T, EAL and LAC

- Learning support

### **7. Quality of teaching**

- Approaches to pedagogy and expectations

- Lesson planning and differentiation

- Monitoring practice

- Improving the quality of teaching

## **8. Quality of learning**

- Approaches to learning and expectations
- Baseline testing – on entry and mid-year/phase
- Tracking system and pupil level data handling
- Standards to be attained and achieved
- Targets setting process
- Assessment, recording and reporting to parents

## **9. Staffing**

- General principles
- Staffing structure, roles and responsibilities – organisation chart
- Training and development
- Performance management
- Terms and conditions

## **10. School organisation**

- The school year and day – timing arrangements including registration timings
- Student organisation/settings/groupings
- Eating arrangements
- Commissioning and reintegration to home school arrangements (for AP or PRU)

## **11. Student support services**

- Welfare/pastoral arrangements
- Transition arrangements
- Student – numbers on roll with a chart indicating expected numbers from opening through to year when school will be full
- Attendance and registration arrangements
- Behaviour for learning and conduct outside the classroom, support, rewards and sanctions

## **12. Working with others,**

- Including parents and multi-agency support

## Annex F: Safeguarding checklist

Below is a checklist that summarises the requirements with which your school's safeguarding policies and procedures must comply. It provides a useful aide for trusts, so that you can ensure that your school is meeting the relevant requirements.

Section 175 action & audit plan		
Has the school completed the section 175 self-assessment/audit?	Yes / No	
Does the school utilise the Section 175 action plan/outcomes?	Yes / No	
Policies and Procedures		
<p>Children Protection Policy <i>(updated annually and available publicly)</i> <i>(para 48 KCSIE Sept 2016)</i></p> <p>Policy contributes to interagency working in line with 'Working Together to Safeguard Children 2015'  <i>(para 49 KCSIE Sept 2016)</i></p> <p>Safeguarding procedures take into account local procedures set up by LSCB  <i>(para 49 KCSIE Sept 2016)</i></p>	<p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p>	Date of last policy review:
<p>Staff Behaviour Policy/Code of Conduct <i>(relationships, social media and acceptable use of technologies)</i>  <i>(para 48 KCSIE Sept 2016) (para 13 Ofsted ISEYES August 2016)</i></p> <p>Staff induction should include briefing on Child Protection Policy, Staff conduct, role of DSL and part 1 of KCSIE  <i>(Annex B KCSIE Sept 2016)</i></p>	<p>Yes / No</p> <p>Yes / No</p>	Date of last policy review:
All staff should be aware of early help process and their role within it	Yes / No	Date of Staff briefing:

Section 175 action & audit plan		
(para 14 KCSIE Sept 2016)		
<p>Appropriate filters and monitoring systems are in place to protect learners from harmful online material.</p> <p>(para 18 Ofsted ISEYES August 2016)</p> <p>Whistleblowing Procedures in place and known by all stakeholders <i>(structures to report internally and beyond)</i></p> <p>(para 33-34 KCSIE Sept 2016)</p>	Yes / No	Date of last policy review:
<p>Staff know how to make a complaint and understand whistleblowing policy <i>(structures to report internally and beyond)</i></p> <p>(para 33-34 KCSIE Sept 2016)</p>	Yes / No	Date of last policy review:
<p>The school has a safer recruitment policy and adopts procedures that deter, reject or identify those who might abuse children.</p> <p>(para 86 KCSIE Sept 2016) (Annex 1 Ofsted ISEYES August 2016)</p>	Yes / No	Date of last policy review:
<p>Policy and procedures for</p> <ul style="list-style-type: none"> <li>• children's health and safety and wellbeing including mental health</li> <li>• meeting the needs of SEND learners</li> <li>• use of reasonable force (including recording, monitoring and student voice)</li> <li>• learners with medical conditions</li> <li>• first aid</li> <li>• educational visits</li> <li>• intimate care and emotional wellbeing</li> <li>• online safety and associated issues</li> <li>• appropriate arrangements to ensure children's and learner's security, taking into account the local context</li> </ul>	<p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p>	Date adopted by school:

Section 175 action & audit plan		
<p>(para 11 Ofsted ISEYES August 2016)</p> <p>And</p> <ul style="list-style-type: none"> <li>early years settings implement safe use of mobile phones/cameras policy</li> <li>risk assessment</li> <li>safe use of electronic and social media by staff and learners</li> <li>site safety and secure access</li> <li>attendance policy including CME</li> </ul>	<p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p>	
Designated person		
<p>DSL in place and member of SLT (<i>Training refreshed every 2 years/other updates at least annually</i>)</p> <p>(Annex B KCSIE 2016) (para 18 Ofsted ISEYES August 2016)</p>	Yes / No	<p>Name:</p> <p>Date of last training:</p>
<p>Deputy DSL/Cover for DSL in place (<i>Including holidays/out of hours</i>)</p> <p>(Annex B KCSIE Sept 2016) (para 18 Ofsted ISEYES August 2016)</p>	Yes / No	<p>Name:</p> <p>Date of last training:</p>
<p>Nominated Governor/Proprietor for Safeguarding</p> <p>(para 45 KCSIE Sept 2016)</p>	Yes / No	<p>Name:</p> <p>Date of last training:</p>
Concerns, Record Keeping and Sharing Information		
<p>Any concerns are shared immediately with DSL or social care (<i>In line with LSCB thresholds and DSL informed</i>)</p> <p>(para 21 &amp; 28 KCSIE Sept 2016)</p>	Yes / No	
<p>Plans are in place with agreed procedures to protect children</p>	Yes / No	

Section 175 action & audit plan		
(Flowchart p10 KCSIE Sept 2016) (para 13 Ofsted ISEYES August 2016)		
<p>Written records are</p> <ul style="list-style-type: none"> <li>made in a timely way</li> <li>held securely</li> <li>shared appropriately with consent</li> </ul> <p>(para 13 Ofsted ISEYES August 2016)</p>	Yes / No	
<p>Staff have awareness of safeguarding issues including</p> <ul style="list-style-type: none"> <li>children missing from education</li> <li>children missing from home or care</li> <li>child sexual exploitation (CSE)</li> <li>bullying including cyberbullying</li> <li>domestic violence</li> <li>drugs</li> <li>fabricated or induced illness</li> <li>faith abuse</li> <li>female Genital Mutilation (FGM)</li> <li>forced marriage</li> <li>gangs and youth violence</li> <li>gender-based violence/violence against women and girls (VAWG)</li> <li>mental health</li> <li>private fostering</li> <li>preventing radicalisation</li> <li>sexting</li> <li>teenage relationship abuse</li> <li>trafficking</li> </ul> <p>(para 41-43 &amp; Annex B KCSIE Sept 2016)</p>	<p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p>	
<p>FGM mandatory reporting</p> <p>(para 27 KCSIE Sept 2016) (para 18 Ofsted ISEYES August 2016)</p>	Yes / No	
<p>Prevent Duty</p> <ul style="list-style-type: none"> <li>Risk assessment</li> <li>Partnership working</li> </ul>	Yes / No	

Section 175 action & audit plan		
<ul style="list-style-type: none"> <li>• Staff training</li> <li>• IT policy</li> </ul> <p><i>(Annex A pg. 56-57 KCSIE Sept 2016) (para 5 Ofsted ISEYES August 2016)</i></p>	Yes / No Yes / No Yes / No	
Understand Channel Programme  <i>(Annex A pg. 58 KCSIE Sept 2016)</i>	Yes / No	
Looked-After Children		
Designated teacher for LAC in place  <ul style="list-style-type: none"> <li>• has undertaken designated teacher training</li> <li>• holds information on looked-after students including, PEP, social worker, virtual head teacher contact</li> <li>• delivers annual report to governors</li> <li>• works with the virtual school head teacher on PP funding and PEP</li> </ul> <p><i>(para 82-83 KCSIE Sept 2016) (Children &amp; Young Persons Act 2008)</i></p>	Yes / No	Name:
Staff have information on looked-after status/contact arrangements/care arrangements  <i>(para 82 KCSIE Sept 2016)</i>	Yes / No	Name:
Children Not in School		
Absences are followed up;  <ul style="list-style-type: none"> <li>• first day calling</li> <li>• home visits</li> <li>• other agencies alerted – LA informed of deletion from register</li> </ul> <p><i>(para 18 Ofsted ISEYES August 2016)</i></p>	Yes / No	
Missing children arrangements	Yes / No	



Section 175 action & audit plan		
<ul style="list-style-type: none"> <li>reporting in line with statutory guidance/LA guidelines (on and off roll)</li> <li>off roll procedures</li> <li>reasonable enquiries to establish whereabouts</li> </ul> <p><i>(Children Missing Education- Statutory guidance for LAs September 2016)</i> For children who go missing</p> <ul style="list-style-type: none"> <li>leaders and managers alert to signs that CME are at risk</li> <li>clear policies and procedures</li> <li>risks are understood and minimised</li> <li>local arrangements to notify LA, especially deletion from register</li> </ul> <p><i>(para 18 Ofsted ISEYES August 2016)</i></p>		
<p>Exclusions</p> <ul style="list-style-type: none"> <li>communications to parents/carers in line with guidance</li> <li>notify governors and LA of permanent exclusion, more than 5 days or 10 lunchtimes in a term, missing exam</li> <li>emergency review for children with SEN and LAC before exclusion</li> <li>role of governors</li> <li>6<sup>th</sup> day provision in place</li> </ul> <p><i>(DfE, September 2017: 'Exclusion from maintained schools, Academies and pupil referral units in England: a guide for those with legal responsibilities in relation to exclusion')</i></p>		
Single Central Register (SCR)		
SCR covers all staff who work at the school including supply and teacher trainees	Yes / No	
SCR covers all others in regular contact including volunteers – 3 visits to the school in 30 days	Yes / No	

Section 175 action & audit plan		
<p>SCR covers all members of governing body and, in academies and free schools proprietary body (academy trust)</p> <p><i>(para 112 KCSIE Sept 2016)</i></p>	Yes / No	
<p>SCR records whether the following <b>checks</b> have been carried out, <b>certificates obtained</b>, <b>date</b> on which checks were completed and <b>by whom</b></p> <ul style="list-style-type: none"> <li>• identity</li> <li>• barred list</li> <li>• enhanced DBS</li> <li>• prohibition from teaching</li> <li>• section 128 check</li> <li>• professional qualifications</li> <li>• right to work in the UK</li> <li>• further checks on people working/living outside the UK (including EEA)</li> <li>• appropriate disqualification by association checks (early/late years provision)</li> </ul> <p><i>(para 112 KCSIE Sept 2016) (Annex 3. Ofsted ISEYES August 2016)</i></p>	<p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p>	
<p>Evidence of references on HR files</p> <p>(Requested directly by the school on all candidates including internal candidates, scrutinised prior to appointment, evidence of follow up where appropriate)</p> <p><i>( para 108-111 KCSIE Sept 2016)</i></p>	Yes / No	
<p>There are clear arrangements for monitoring and management of the SCR</p> <p><i>(Annex 1 ISEYES August 2016)</i></p>	Yes / No	

Section 175 action & audit plan		
Undertake appropriate checks on all visitors who work with children or staff or to address assemblies  (Annex 1&3 ISEYES August 2016)	Yes / No	
Allegations		
Nominated governor/case manager to liaise with LADO officer in the event of allegations against head teacher  (para 151 KCSIE Sept 2016)	Yes / No	
Procedures in place to handle allegations against staff  <ul style="list-style-type: none"> <li>• referral to LADO officer</li> <li>• referral to DBS and NCTL when needed</li> </ul> (para 120, 167 & 190 KCSIE Sept 2016)	Yes / No	
Clear comprehensive records  (para 170 – 172 KCSIE 2016)		
Policy and procedures in place to deal with peer on peer abuse  (para 42 KCSIE Sept 2016) (para 18 Ofsted ISEYES August 2016)	Yes / No	
Training (para 41 KCSIE July 2015, para 13 & 18 Ofsted, ISEYES August 2015)		
Staff undertake safeguarding and child protection training at induction  (para 64 KCSIE September 2016)	Yes / No	
The whole school staff team have completed safeguarding basic awareness training which is regularly updated (at least annually), including non-teaching staff such	Yes / No	

Section 175 action & audit plan				
as site maintenance staff, midday assistants and governors				
Whole staff training on local arrangements for referral and reporting	Yes / No			
Staff have undertaken input/briefing on KCSIE Sept 2016 Section 1	Yes / No			
Governors have undertaken input/briefing on KCSIE Sept 2016 Section 2 & 3	Yes / No			
Training Undertaken <i>(para 43 KCSIE Sept 2016)</i>	DSL	Staff	Children	
Child missing from education				
Child missing from home or care				
Child Sexual Exploitation (CSE)				
Bullying including cyberbullying				
Domestic violence				
Drugs				
Fabricated or induced illness				
Faith abuse				
Female Genital Mutilation (FGM)				
Forced marriage				
Gangs and youth violence				
Gender-based violence/violence against women and girls (VAWG)				
Mental health				

Section 175 action & audit plan				
Private fostering				
Preventing radicalisation				
Procedures with regard to peer abuse				
Sexting				
Teenage relationship abuse				
Trafficking				
Safeguarding				
Ensure that children are taught about safeguarding (online, PSHE, SRE)				
<ul style="list-style-type: none"> <li>children able to respond to and calculate risk effectively</li> </ul>				
<ul style="list-style-type: none"> <li>children and learners are aware of support available to them.</li> </ul>				
<ul style="list-style-type: none"> <li>children and learners are helped to keep themselves safe from bullying, homophobic behaviour, racism, sexism and other discrimination</li> </ul>				
<ul style="list-style-type: none"> <li>discriminatory behaviours are challenged</li> </ul>				
(para 68 KCSIE Sept 2016)				

Section 175 action & audit plan						
Referrals in the past year		Number	Comments			
Number of children the school have considered as needing additional support/at risk						
Number of children looked-after						
Number of children referred to Children's Social Care						
Number of referrals that were accepted by Children's Social Care						
Number of referrals for which a CAF was recommended						
Number of CAFs running in the school						
Number of CAFs where school is the lead professional						
Numbers of incidents in school in the past year						
Racism	Bullying	Homophobia	PVE	CSE	FGM	FM

Section 175 action & audit plan	
<p><b>Key questions for referrals and incident data</b></p> <ul style="list-style-type: none"> <li>• How does this compare to previous years' data?</li> <li>• Why are numbers <ul style="list-style-type: none"> <li>○ high/low?</li> <li>○ increased/decreased rapidly/steadily?</li> </ul> </li> <li>• Has staff training or lack of training impacted on figures? <ul style="list-style-type: none"> <li>○ How many of these concerns have been managed through universal response/co-ordinated response/specialist response?</li> </ul> </li> </ul>	



Department  
for Education

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